Supreme Court of the United States

October Term, 1920.
No.
Original

IN THE MATTER
OF

The Petition of HUSSEIN LUTFI BEY, Master of the Turkish Government steamship "GUL DJEMAL", for Writ of Prohibition and/or a Writ of Mandamus

against

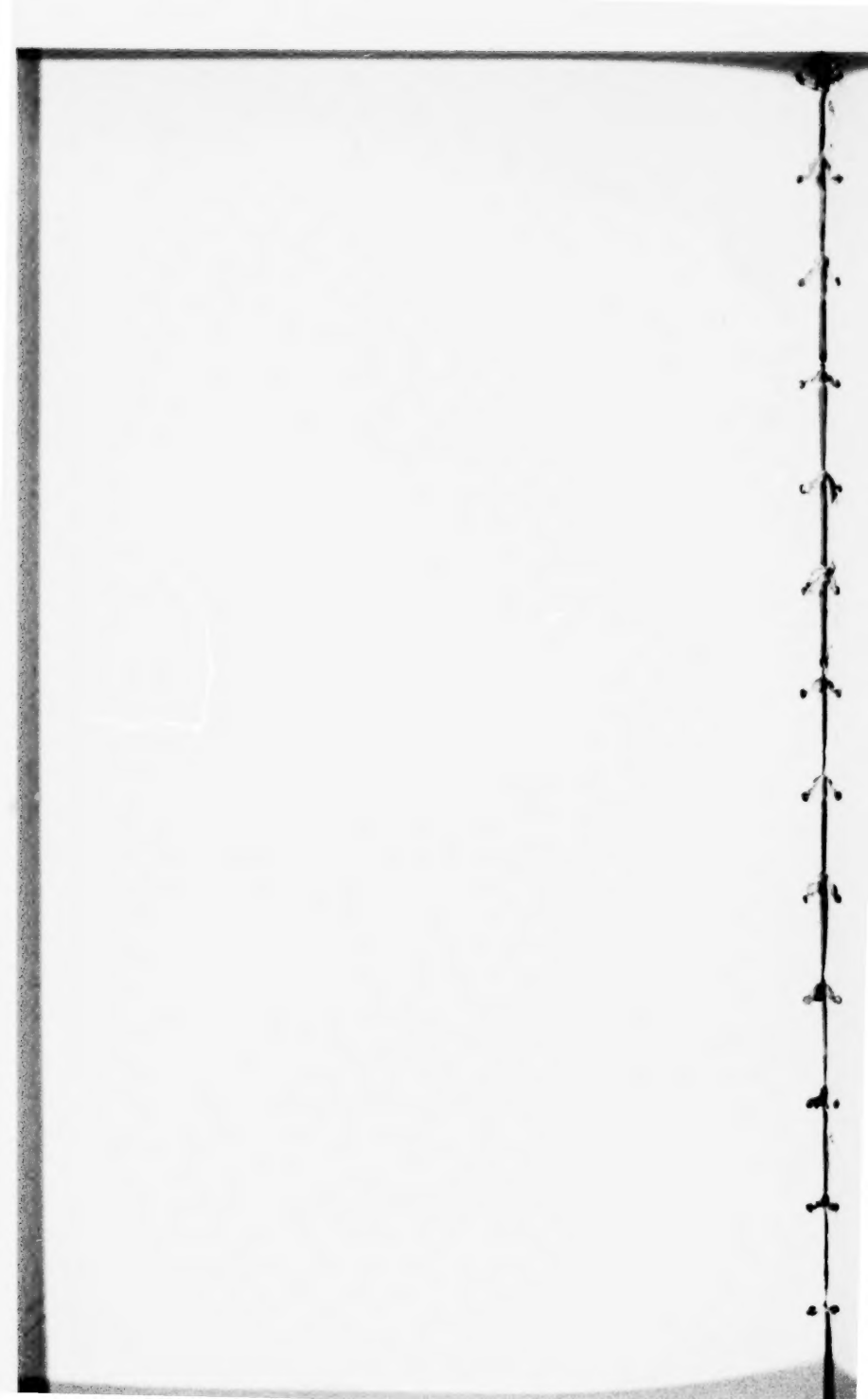
The HON. JOHN C. KNOX, United States District Judge for the Southern District of New York, and the other Judges and officers of the said United States District Court for the Southern District of New York.

MOTION AND PETITION FOR A WRIT OF PROHIBITION AND/OR FOR A WRIT OF MANDAMUS.

WILLIAM A. PURRINGTON,
Counsel for Petitioner,
52 Wall Street,
New York City.

FRANK J. McCONNELL,
JOHN M. WOOLSEY,
Of Counsel.

B. H. TYRREL, PRINTER, 206-8 FULTON STREET, NEW YORK.



SUPREME COURT OF THE UNITED STATES.

IN THE MATTER OF The Petition of HUSSEIN LUTFI BEY, Master of the Turkish Government steamship *Gul Djemal* for a Writ of Prohibition and/or a Writ of Mandamus *against* Hon. John C. Knox, United States District Judge for the Southern District of New York, and the other judges and officers of the said United States District Court for the Southern District of New York.	October Term, 1920. No. —— Original

MOTION FOR PERMISSION TO FILE PETITION FOR WRIT OF PROHIBITION AND/OR FOR A WRIT OF MANDAMUS.

And now comes the petitioner, Hussein Lutfi Bey, Master of the Turkish Government steamship *Gul Djemal,* now lying at the port of New York, by William A. Purrington, his attorney and counsellor, appearing specially, moves—

1—For leave to file the petition for a writ of prohibition and for a writ of mandamus, hereto annexed, and

2—That a rule be entered and issued directing the District Court of the United States for the Southern District of New York and Hon. John C. Knox, a judge thereof, and all the other judges and officers of said court, to show cause why a Writ of Prohibition and/or a Writ of Mandamus should not issue against them and each of them in accordance with the prayer of said petition, and why said petitioner should not have such other and further relief in the premises as may be just.

WILLIAM A. PURRINGTON,
Counsel for Petitioner.

FRANK J. MCCONNELL,
JOHN M. WOOLSEY,
Of Counsel.

SUPREME COURT OF THE UNITED STATES.

IN THE MATTER OF The Petition of HUSSEIN LUTFI BEY, Master of the Turkish Government steamship *Gul Djemal* for a Writ of Prohibition and/or a Writ of Mandamus *against* the Hon. John C. Knox, United States District Judge for the Southern District of New York, and the other judges and officers of the said United States District Court for the Southern District of New York.	October Term, 1920 No. —— Original

PETITION FOR WRIT OF PROHIBITION AND/OR A WRIT OF MANDAMUS.

TO THE HONORABLES THE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

The petition of Hussein Lutfi Bey, Master of the Turkish Government steamship *Gul Djemal* against the Hon. John C. Knox, Judge of the United States District Court for the Southern District of New York, sitting in Admiralty, and all of the other judges and officers of

said United States District Court for the Southern District of New York, respectfully represents:

FIRST: That this petitioner is, and at all the times hereinafter mentioned, was, the Master of the Turkish Government steamship *Gul Djemal*. The *Gul Djemal* is and at all the times hereinafter mentioned was owned by the Turkish Government and in the possession of this petitioner as agent and representative of the Turkish Government. She is now lying in the port of New York, in readiness to sail. The navigating officer of the *Gul Djemal* is Mahmed Burhaneddin, a duly commissioned officer of the Turkish Navy, specially assigned to duty upon the *Gul Djemal* by the Turkish Admiralty, through the Turkish Ministry of Marine. Your petitioner himself and the officers and crew of the *Gul Djemal* are all employed and paid by the Turkish Government and were all assigned to the *Gul Djemal* by the Turkish Ministry of Marine. An affidavit of said Burhaneddin is hereto annexed and marked Schedule "A" and hereby made part hereof.

SECOND: The *Gul Djemal* is one of a fleet of twenty-two vessels which for some time prior to and at the time of the arrests and attachments hereinafter referred to herein belonged to and were and are a part of the public service of the Turkish Government.

The *Gul Djemal* is and at all times hereinafter mentioned was owned, manned, managed, operated and controlled by and in the possession of the Turkish Ministry of Marine through its department of navigation known as the Administration Seire-Seffain which is an integral part of the Government of Turkey.

THIRD: The *Gul Djemal* left Constantinople with passengers and a small amount of cargo on October 6th, 1920,

having obtained a permit to make the voyage from the Allied Port Control Officers on the previous day. This Allied Naval Control permit was handed to your petitioner by said Officers in exchange for the register of the ship, and requests all Allied Naval Authorities to give my vessel every possible assistance in order that she may complete her voyage with dispatch. A copy of the original permit, signed by the British, French and Italian Port Captains at Constantinople, is annexed hereto as Schedule "B" and made part hereof.

FOURTH: The *Gul Djemal* was chartered by the Turkish Government through the Administration Seire-Seffain to one M. George Dede Oglu, a resident of Constantinople, Turkey, for a period of forty-five days, commencing on the 6th of October, 1920. The period of said charter party has now expired. A true translation thereof is annexed thereto and made part hereof, marked Schedule "C."

FIFTH: The charterer, M. George Dede Oglu, has failed to pay for various supplies to the vessel pursuant to his agreement as provided in the charter party, thereby breaching the charter party, as a result of which the vessel has been improperly libelled as hereinafter described and delayed from sailing.

SIXTH: The *Gul Djemal* has fully complied with all the requirements of the duly constituted authorities of the Port of New York and of the United States and is now and has been ready to depart therefrom since November 26, 1920, but cannot do so because she has been wrongfully libelled, and is under arrest at the instance of various supply men, stevedores, charterer's agents, etc., for sums totalling Eighty thousand, five hundred and eighty-five ($80,585.) dollars. Her delay in port is cost-

ing the Turkish government a large amount of money daily due to the loss of the active use of the vessel and the expenses of a crew of upwards of two hundred men which are now and have been on board her before and since her arrival at New York.

SEVENTH: That on the 2nd day of December, 1920, the Mount Royal Steamship Company, Ltd., filed its libel in the United States District Court for the Southern District of New York in admiralty against the Turkish Government steamship *Gul Djemal*, claiming the sum of Sixty-six thousand, eight hundred and forty-two dollars and forty cents ($66,842.40) by reason of certain alleged advances claimed to have been made for coal, supplies, water and services furnished said vessel and necessary for her maintenance between the 13th and 21st days of October, 1920, at the port of Gibraltar, and between October 31st and November 22nd, 1920, at the port of New York, as will more fully appear from a copy of the libel hereto annexed marked Schedule "D" and hereby made a part of this petition.

That after the filing of said libel, process was issued in ordinary course and the Turkish Government steamship *Gul Djemal* was arrested thereunder on the 2nd day of December, 1920. A true copy of the process is hereto annexed as Schedule "E" and hereby made part hereof.

EIGHTH: That on the 30th day of November, 1920, the Terminal Service Corporation filed its libel in the United States District Court for the Southern District of New York in admiralty against the Turkish Government steamship *Gul Djemal* and the Seire-Seffain Steamship Company, claiming damages in the sum of Nine thousand, one hundred and sixty-four dollars, sixty-three cents ($9,164.63) by reason of certain alleged wharfage, labor, supplies and other necessaries furnished said ves-

sel, alleged to have been furnished during the period from 3 P. M., November 1st, 1920, to 3 P. M., November 30th, 1920, as will more fully appear from a copy of the libel hereto annexed, marked Schedule "F", and hereby made a part of this petition.

That after the filing of said libel, an order for process was issued and the Turkish Government steamship *Gul Djemal* was on or about December 1, 1920, arrested thereunder. Process of foreign attachment was also issued as to certain monies stated to belong to what the libelant calls the Seire-Seffain Steamship Company, but which is really the Administration Seire-Seffain, an integral part of the Turkish Government. Copies of these processes are hereto annexed as Schedules "G" and "H" and hereby made part hereof.

NINTH: That on the 8th day of December, 1920, on the representation to the Court by counsel appearing specially in the actions on behalf of the Spanish Ambassador as representative of the Turkish or Ottoman Government, as shown by the special appearance hereto annexed marked Schedule "H-I" and made part hereof, an order was issued by the Hon. John C. Knox, United States District Judge, upon the application filed by William A. Purrington, Esq., and Frank J. McConnell, Esq., counsel appearing specially on behalf of the Spanish Ambassador and the Turkish or Ottoman Government, for the purpose of claiming immunity, that the libelants show cause why orders in the aforesaid suits and in three other suits against the Turkish Government steamship *Gul Djemal* should not be entered herein vacating the several writs of attachment and of arrest heretofore issued out of the said court in the aforesaid actions against the Turkish Government steamship *Gul Djemal* and releasing said vessel and declaring her and said property and monies immune from the process of said court, and dis-

missing the libels herein against the *Gul Djemal* for want of jurisdiction of the said court over said vessel, on the ground that the steamship was a Turkish Government vessel, owned, possessed and managed by said government, presently in the possession of the said government of Turkey, in the person of a master employed and paid by said government and wholly manned and operated by officers, engineers and a crew employed and paid by said government, as will more fully appear from the copies of the order to show cause and the suggestion hereto annexed, marked Schedules "I" and "J", and hereby made a part of this petition.

TENTH: That thereafter, a hearing was had on about the 18th day of December, 1920, before Judge Knox and a blanket petition of traverse to the suggestion of the Spanish Ambassador by the Mount Royal Steamship Company, Ltd., duly verified by Onnik Nevrouz, as Treasurer, was presented on behalf of the Mount Royal Steamship Company, Ltd., for itself and its co-libellants; a copy of which is hereto annexed, marked Schedule "K", and hereby made a part hereof.

The proctors appearing specially on behalf of the Spanish Ambassador and the Turkish Government, also submitted with the permission of the court, on the 18th day of December, 1920, a letter from the United States State Department, dated December 16th, 1920, as part of the record. Copy of this letter is hereto annexed as Schedule "L" hereof.

ELEVENTH: That thereafter and on the 22nd day of December, 1920, the Hon. John C. Knox handed down an opinion in this case in which it was erroneously and improperly held that the *Gul Djemal* would not be released, that the suggestion of the Spanish Ambassador could not be received on behalf of the Turkish Government, and

that the Spanish Ambassador in his capacity as representative of the Turkish Government must be relegated to the Department of State for such relief as he could there obtain. Copy of the opinion is hereto annexed, marked Schedule "M" hereof.

TWELFTH: Thereafter, and on the 23rd day of December, 1920, the Spanish Ambassador addressed and caused to be delivered to the Department of State, a letter dated December 23rd, 1920, a true copy of which is hereto annexed marked Schedule "N" and hereby made part hereto.

THIRTEENTH: Thereafter, and on the 24th day of December, 1920, the Spanish Ambassador received from the Department of State, dated December 24th, 1920, a true copy of which is hereto annexed and hereby made part hereof as Schedule "O".

FOURTEENTH: On the said letters and an affidavit of Frank J. McConnell, verified December 27, 1920, a rehearing was granted and a further order was issued by the Hon. John C. Knox, United States District Judge, that the libellants show cause why said writs of arrest and attachment in the aforesaid actions and three other actions against the Turkish Government steamship *Gul Djemal* should not be vacated and the Turkish Government steamship *Gul Djemal* released and declared immune from process of the said court, and the libels herein dismissed for want of jurisdiction of the said court, said order being based as before on the ground that the steamship was a Turkish Government vessel, owned, possessed and managed by said government, in the possession of the said Government of Turkey, in the person of a master employed and paid by said government and wholly manned and operated by officers and crew employed and paid by said government, and that the official status of

the Spanish Ambassador was established as the representative of the Turkish Government by the correspondence between him and the State Department above mentioned, as will more fully appear from the copy of the order to show cause, affidavit and letters above referred to and annexed to said order to show cause, marked Schedule "P", and hereby made a part hereof.

FIFTEENTH: That thereafter a rehearing was had and on the 3rd day of January, 1921, Judge Knox handed down an opinion in which it was wrongfully and improperly held that the *Gul Djemal* would not be released. Copy thereof is hereto annexed, marked Schedule "Q", etc.

Thereafter an order was made and entered in accordance with the opinion, a copy of this order is hereto annexed, marked Schedule "R".

SIXTEENTH: That said vessel is now lying, ready to sail, at Pier 45, North River, New York City, under arrest and attachment by the libellants mentioned and others. Your petitioner cannot file a bond or arrange to have the vessel released from process without waiving her right to immunity as a vessel owned by the Turkish Government. It is important, therefore, that a speedy hearing of this cause may be had in order that the status of the said vessel may be promptly and authoritatively determined by this court.

SEVENTEENTH: True copies of all the papers filed in the United States District Court relevant to this application are hereto annexed.

EIGHTEENTH: As your petitioner is informed and believes, the Turkish government steamship *Gul Djemal*, by reason of being owned by and in the possession of the Turkish Government, is now and at the time of ser-

vice of said writs was wholly immune from, and is and was not subject to, the process of the court in any form by reason of the facts stated in the suggestion of the Spanish Ambassador representing the interests of the Turkish Government.

WHEREFORE, your petitioner prays:

1—That a Writ of Prohibition may issue against the said Hon. John C. Knox, Judge of the United States District Court for the Southern District of New York, and/or the other Judges and officers of said court, prohibiting him and them from proceeding with the causes aforesaid and from exacting security as a condition of the release of the steamship *Gul Djemal*, or otherwise interfering in any manner with her, or with any monies or other property of the Turkish Government, on the ground that the Turkish Government steamship *Gul Djemal* and all monies and property of said Government is and was immune from process of this court for the reasons stated in the suggestion of the Spanish Ambassador set forth herein, and/or

2—That a Writ of Mandamus may issue out of and from this court against the said Hon. John C. Knox, Judge of the United States District Court for the Southern District of New York, and/or the other Judges and officers of said Court commanding them to vacate the order made and entered by him on the 10th day of January, 1921, and to enter an order forthwith releasing the Turkish government steamship *Gul Djemal* and any monies or other property of the Turkish Government without requiring any security as a condition precedent of said release, and staying all proceedings to arrest or detain the said Turkish government steamship *Gul Djemal* and any monies or other property of the Turkish Government under the said writs, or otherwise, in the

said court, so long as the said Turkish government steamship *Gul Djemal* remains in the service of the Turkish or Ottoman government or said monies or other property remain in the ownership of said Turkish Government.

3—That this court issue an order to the District Court for the Southern District of New York staying all proceedings under the libels herein mentioned and all other libels now pending or which may be hereafter filed against the steamship *Gul Djemal*, said stay to remain in force until this court shall have heard and decided this Writ of Prohibition and its mandate therein shall have been issued to the said District Court.

4—That the court grant to the petitioner such other or further relief as may be just in the premises.

HUSSEIN LUTFI BEY,
Petitioner.

Sworn to before me this
12th day of January, 1921.
JAMES D. BROWN,
Notary Public, New York County,
County Clerk's No. 623, Register's No. 1651.
(Seal)

WILLIAM A. PURRINGTON,
Counsel for Petitioner.

FRANK J. McCONNELL,
JOHN M. WOOLSEY,
of Counsel.

SCHEDULE "A".

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

MOUNT ROYAL STEAMSHIP COMPANY, LTD., Vacuum Oil Company, Union Stevedoring Corporation, D. T. Magowan, and Terminal Service Corporation,
Libellants,

against

S. S. "GUL DJEMAL", etc.

STATE OF NEW YORK
City of New York } ss.:
County of New York

MAHMED BURHANEDDIN, being duly sworn, deposes and says:

I am a subject of the Turkish or Ottoman Empire, residing at the City of Constantinople, Turkey, and am the Navigating Officer of the Turkish steamship *Gul Djemal* now lying at Pier 45, North River, City of New York.

I am a Lieutenant in the Turkish Navy, duly commissioned as such. I was formerly in command of a Turkish torpedo boat destroyer by the Turkish Admiralty and assigned by the Admiralty, through the Turkish Ministry of Marine, to act as Navigating Officer of the steamship

Gul Djemal, which vessel is owned, operated, controlled and in the possession of the Turkish or Ottoman Government in the person of her Master; all the officers and crew upon the said vessel being employed and paid by the said Turkish Government, through its department of navigation, known as the Administration Seire-Seffain.

MAHMED BURHANEDDIN.

Sworn to before me this
10th day of December, 1920.
JAMES D. BROWN,
Notary Public,
New York County.
County Clerk's No. 623.
Register's No. 1651.
(Seal)

SCHEDULE "B".

Allied Port Control Offices,
Constantinople,
5th October, 1920.

To The Master of
Turkish S/S "GUL DJEMAL".

Being in all respects ready for sea you are to leave Constantinople at 6 p m, 6th October 1920, and proceed direct to New York in accordance with directions given you at Port Convoy Office.

TO ALL ALLIED NAVAL PATROL OFFICERS
AND ALL OTHER PERSONS INTERESTED.

Turkish S/S "GUL DJEMAL" has permission to sail from CONSTANTINOPLE to NEW YORK and return, with cargo and passengers.

All Allied Naval Authorities are requested to give every possible assistance to this vessel in order that she may complete her voyage with despatch.

A TOUS LES OFFICIERS DE PATROUILLE DES MARINES ALLIEES
ET A TOUTES PERSONNES INTERESSEES.

Le navaire ottoman "GUL DJEMAL" est autorisé à se rendre de Constantinople à New York et retour, pour transporter cargaison et passangers.

Priere à toutes personnes des Marines Alliées de bien vouloir acorder aide et projection à ce navaire afin de lui permettre d'effectuer son voyage.

F. L. FIORE,
Italian Captain of the Port.

S. LARME,
French Captain of the Port.

GEO. T. ELLIS, Cap R N
British Captain of the Port.

SCHEDULE "C".

TRANSLATION

S. S. "GUL DJEMAL"

CHARTER PARTY

It is this day mutually agreed between H. HUSSEIN BEY, the Managing Director of Administration Seire-Seffain of Constantinople, the Owner of s. s. "GUL DJEMAL" of (5071) tons gross, on the one part, and M. GEORGE DEDE OGLU, resident at Arabian Han No 133 hereafter called the Charterer, on the other part, for a voyage from Constantinople to New York and return, as follows:—

Art. 1—The Owners agree to let and the Charterer agrees to hire the s. s. "GUL DJEMAL" for a voyage from Constantinople to New York and return.

Art. 2—S. S. "GUL DJEMAL" shall be insured against all risks for a sum of (300,000) Three Hundred Thousand Pounds Turkish in the name of Administration Seire-Seffain for a voyage to New York and return. All insurance expenses shall be paid by the Charterer. The Seire-Seffain will not sail the ship unless an Insurance Policy is obtained by the Charterer, who will be responsible for all expenses and losses which may arise in respect of the above delay.

Art. 3—M. George Dede Oglu agrees to hire on (Time charter) the s. s. "GUL DJEMAL" for a sum of (50000) Fifty thousand Pounds Turkish per month. All expenses as coal, water, oil, and other materials necessary for the sailing of the above ship—except the payment of

the crew of s. s. "Gul Djemal" shall be borne by him—M. Dede Oglu—thirty days being considered one month.

Art. 4—The Time of the Charter Party is a month and half, and begins from the date of the delivery of s. s. "Gul Djemal" to M. Dede Oglu, the Charterer who will use the above ship for the purpose of transport of passengers and cargo from Constantinople to New York and return.

Art. 5—The Charterer, M. Dede Oglu, undertakes to pay the agreed sum (1667) Sixteen hundred and sixty-seven Pounds Turkish per day in case he will not be able to redeliver the ship to the Owners at Constantinople after the elapse of forty-five days.

If the steamer arrives back before the elapse of forty-five days, Seire-Seffain agrees to return the said sum per day. It is hereby agreed that s. s. "Gul Djemal" shall be redelivered to the Owners, in the same perfect condition as when received, on her arrival at Constantinople. If not a demurrage of 500£t Five hundred Pounds Turkish per day shall be paid by the Charterer. The Owners have the right to detain the cargo loaded on board of s. s. "Gul Djemal", in case the Charterer is not able to pay indemnities of demurrage, and the hire of the surplus days of the Charter Party.

Art. 6—The Owners undertake to deliver the ship to the Charterer on the 5th Oct., 1920, except in case of force majeur. The payment of hire begins from the day after the delivery of the above ship. The Charterer, M. Dede Oglu agrees to pay in full, in cash the sum of (75000) Seventy five Thousand Pounds Turkish to the Owners at Constantinople on 25th Sept., 1920, as the payment of hire of one month and half.

Art. 7—M. George Dede Oglu undertakes to pay the sum of (5000 £t) Five Thousand Pounds Turkish as a guarantee to the Owners within 24 hours after the signing of this charter party. It is mutually agreed that the Owners will consider themselves free to record the said sum of guarantee as an income to their Company in case the Charterer will not be able to pay in full the payment of hire on the 25th Sept.-1920. It is also agreed that in case the Allies object to the sailing of the ship after the payment of hire, the Owners will have to return the sum of Guarantee to the Charterer.

Art. 8—The permission which will be given by the British Captain of the Port of Constantinople authorizing the sailing of the above ship to America will be accepted as an indisputable document by both parties.

Art. 9—S. S. "Gul Djemal" will be examined by the Officials appointed by the British Captain of the Port of Constantinople in presence of Official or Officials of Administration Seire-Seffain and those of M. Dede Oglu.

In case a difference arises in respect of the necessary equipments and accommodation for the sailing of this ship, the decision which will be given by the British Captain of the Port of Constantinople, will be respected by both parties.

Art. 10—It is hereby agreed that the Charterer will have to sail s. s. "Gul Djemal" after the elapse of fifteen days of the arrival of the said ship at New York. In case he fails to do so, the Master of the said ship, will provide all the sailing materials and return without being obliged to take any legal proceedings. The Charterer, Dede Oglu, will have no right to claim any losses or indemnities with regard to such like return voyage of the

said steamer. It is also agreed that the Charterer will pay the sum of (20,000) twenty thousand Pounds Turkish as a guarantee against the expenses of such like return voyage, in case he fails to respect the rights of this article of this charter party.

Art. 11—The deck and engine officers shall be fed free of charge by the Charterer from the day of their departure from Constantinople to the day of the arrival back. But the food of the crew of the ship shall be supplied by the Owners.

Art. 12—Any difference which may arise in respect of this Charter-Party shall be settled at Constantinople by arbitrators who will appointed by both parties.

Art. 13—This Charter-Party has been exchanged in duplicate on this day of 4th September, 1920.

This charter is made with consent of the Allied Powers on the express conditions that in the event of the coming into execution of Art 258 (1) and (2) of the "conditions of the peace" between the Allied Powers and Turkey the same shall cease and that all claims ipso facto between all parties concerned respecting ship, cargo and freight, shall be referred to, and settled by arbitration.

No claim whatsoever in respect of this charter and the consequences thereof shall attach to the Allied Powers or to any officer in the service of the said powers or any of them.

Charter to be signed in the offices of the Allied Captains of the Port and witnessed by British Captain of

the Port and another Allied Captain of the Port, if desirable.

Witness
G. E. Eliss
British Captain of the Port
Constantinople.

Owner of the ship.

Director
H. Husseis.

The Charterer
G. Dedeoglu.

Harold Wood
Lieut.

Conformemant to the original of the Charter Party.

SCHEDULE "D".

LIBEL.

To the Honorable the Judges of the United States District Court for the Southern District of New York.

The Libel and Complaint of Mount Royal Steamship Company, Ltd., against The Steamship *Gul Djemal*, her engines, boilers, etc., in a cause of contract, civil and maritime, alleges upon information and belief and respectfully shows to this Honorable Court as follows:

First: At all the times hereinafter mentioned your libellant was and now is a corporation, organized and existing under and by virtue of the laws of the Dominion of Canada, with an office and principal place of business at Montreal, Canada, and engaged in the business of steamship and forwarding agents.

Second: The steamship *Gul Djemal* now is, or will be during the pendency of process herein, within this district and within the jurisdiction of this Honorable Court.

Third: Between the 13th and 21st days of October, 1920, at the port of Gibraltar, your libellant at the special instance and request of the master and owners of said vessel advanced and paid out for the use of said vessel and upon her credit, the sum of Eleven thousand nine hundred fifty-seven pounds, thirteen shillings and two pence (£11,957.13.2) sterling for coal, supplies and services furnished said vessel and necessary for her maintenance between said dates.

FOURTH: At various dates between October 31st, 1920, and November 22, 1920, your libellant, upon the special instance and request of the captain and owners of said vessel and upon her credit, advanced and paid out the sum of Twenty-four thousand nine hundred ninety and 35/100 ($24,990.35) Dollars, at the port of New York for supplies, water and services furnished to said vessel and necessary for her maintenance between said dates.

FIFTH: Your libellant has a maritime lien against the said steamship *Gul Djemal* for the said sums of money mentioned in articles "Third" and "Fourth" hereof.

SIXTH: By reason of the premises there became, and still is, due and owing from said vessel to your libellant, the sum of Forty-one thousand eight hundred and fifty-two and 5/100 ($41,852.05) Dollars, the equivalent of Eleven thousand nine hundred fifty-seven pounds, thirteen shillings and 2 pence (£11,957.13.2) sterling, with interest from the 13th day of October, 1920, and the sum of Twenty-four thousand nine hundred ninety and 35/100 ($24,990.35) Dollars, with interest thereon from the said 31st day of October, 1920, no part of which has been paid although duly demanded.

SEVENTH: All and singular the premises are true and within the Admiralty and Maritime jurisdiction of the United States and of this Honorable Court.

WHEREFORE, libellant prays that process in due form of law, according to the course and practice of this Honorable Court in causes of Admiralty and Maritime jurisdiction issue against the said steamship *Gul Djemal*, her engines, boilers, etc., and that all persons having or claiming any interest therein be cited to appear and answer all and singular the matters aforesaid; that this Honorable Court be pleased to decree to your libellant

its damages with interest and costs, and that the said steamship *Gul Djemal*, her engines, boilers, etc., be condemned and sold to satisfy the same, and that your libellant may have such other and further relief as in law and justice it may be entitled to receive.

HARRINGTON, BIGHAM & ENGLAR,
Proctors for Libellant,
Office and Post Office Address,
No. 64 Wall Street,
Borough of Manhattan,
City of New York.

STATE OF NEW YORK,
County of New York, } ss.:

ONNIK NEVROUZ, being duly sworn, says:

That he is the Treasurer of the corporation libellant herein and duly authorized to make this verification; that he has read the foregoing libel and knows the contents thereof, and that the same is true of his own knowledge except as to those matters therein stated to be upon information and belief, and that as to those matters he believes it to be true.

That the reason this verification is made by deponent and not by libellant is because libellant is a corporation and deponent is an officer thereof.

ONNIK NEVROUZ.

Sworn to before me this
2d day of December, 1920.
JOSEPH L. O'CONNELL,
Notary Public, Nassau County,
Certificate filed in
New York County Clerk's No. 105,
New York County Register's No. 1186.
Term expires March 30, 1921.
(Seal)

SCHEDULE "E".

SOUTHERN DISTRICT OF NEW YORK, ss.:

THE PRESIDENT OF THE UNITED STATES OF AMERIC, To the Marshal of the Southern District of New York, Greeting: Whereas, a Libel hath been filed in the District Court of the United States for the Southern District of New York, on the 2nd day of December in the year of our Lord one thousand nine hundred and twenty by

MOUNT ROYAL STEAMSHIP COMPANY, LTD.,

against

STEAMSHIP "GUL DJEMAL"

in a cause, civil and maritime, for damages for breach of contract amounting to $66,842.40 for the reasons and causes in the said libel mentioned, and praying the usual process or monition of the said Court in that behalf to be made, and that all persons interested in the said steamship or vessel, her tackle, &c., may be cited in general and special to answer the premises, and all proceedings being had that the said steamship or vessel, her tackle, &c., may for the causes in the said petition mentioned be condemned and sold to pay the demands of the Libellant.

YOU ARE THEREFORE HEREBY COMMANDED to attach the said steamship or vessel, her tackle, &c., and to detain the same in your custody until the further order of the Court respecting the same, and to give due notice to all persons claiming the same, or knowing or having anything to say why the same should not be condemned and sold pursuant to the prayer of the said libel, that they be and appear before the said Court, to be held in and

for the Southern District of New York, on the 13th day of December 1920 at 10.30 o'clock in the forenoon of the same day, if the same shall be a day of jurisdiction, otherwise on the next day of jurisdiction thereafter, then and there to interpose a claim for the same, and to make their allegations in that behalf. And what you shall have done in the premises, do you then and there make return thereof, together with this writ.

WITNESS, the HON. LEARNED HAND, Judge of the said Court, at The City of New York, in the Southern District of New York, this 2nd day of December in the year of our Lord one thousand nine hundred and twenty and of our Independence the one hundred and forty-fifth.

ALEX GILCHRIST, JR.,
Clerk.

HARRINGTON, BIGHAM & ENGLAR,
Proctors for Libellant.

(Endorsed:)

Vol. 75, Page 225. United States District Court Southern Dist. of New York S. S. "Gul Djemal" &c. Monition ret'able Dec. 13, 1920.

SCHEDULE "F".

To the Honorable the Judges of the United States District Court for the Southern District of New York:

The libel of Terminal Service Corporation against the steamship *Gul Djemal*, her engines, tackle and apparel, and against Seire-Seffain Steamship Company in a cause of contract, civil and maritime, alleges as follows:

First: The Terminal Service Corporation at all the times hereinafter mentioned was and still is a New York corporation engaged in the business of furnishing wharfage, labor and supplies to steamships.

Second: The steamship *Gul Djemal*, a Turkish vessel of 5,071 tons gross and 2,991 tons net register is now in the Southern District of New York and within the jurisdiction of this Court.

Third: The respondent, Seire-Seffain Steamship Company, at all the times hereinafter mentioned was and still is a Turkish corporation, engaged in the steamship business, and the owner of said steamship *Gul Djemal*.

Said respondent is not within this District but has goods and chattels within this District, to wit: said steamship *Gul Djemal* now lying at Pier 45 North River in the custody of her master, and certain sums of money in the possession of Cosmos Transport Company, Union Square Hotel Building, 18 Union Square, New York City, and of Mount Royal Steamship Company, Ltd., 17 Battery Place, New York City.

FOURTH: During the period from 3 p. m. November 1, 1920, to 3 p. m. November 30, 1920, the libellant, relying on the credit and security of said vessel, at the special instance and request of said vessel and the agents to whom the management of said vessel at New York was entrusted, furnished said vessel wharfage, labor, supplies and other necessaries of the agreed and reasonable value of $9,164.52.

FIFTH: Said services were maritime and the libellant has a maritime lien on said steamship *Gul Djemal* for said services and for said amount.

SIXTH: There is now due and owing to the libellant from said steamship *Gul Djemal* and her owner the sum of $9,164.52, no part of which has been paid, although duly demanded. Said steamship is still lying at the south side of Pier 45, North River, and, until her removal therefrom, the libellant will continue to furnish wharfage, labor, supplies and other necessaries at an agreed and reasonable rate, and there will become due and owing from said vessel to the libellant a sum of money not ascertainable in addition to said sum of $9,164.52.

SEVENTH: All and singular the premises are true and within the admiralty and maritime jurisdiction of the United States and of this Honorable Court.

WHEREFORE, the libellant prays that process may duly issue against said steamship *Gul Djemal*, her engines, tackle and apparel, that all persons claiming any interest therein be cited to appear and answer on oath all and singular the matters aforesaid and that the said steamship may be condemned and sold to pay the demands and claims of the libellant, with interest and costs;

And the libellant further prays that process *in personam* with clause of foreign attachment may duly issue against the respondent, Seire-Seffain Steamship Company, citing it to appear and answer on oath all and singular the matters aforesaid, and if it cannot be found, then its goods and chattels in this District, to wit: said steamship *Gul Djemal* in the custody of her master at Pier 45, North River, and all respondent's property in the possession of Cosmos Transport Company, Union Square Hotel Building, 18 Union Square, New York City, and of Mount Royal Steamship Company, Ltd., 17 Battery Place, New York City, be attached and seized to the amount sued for;

And that this Court will render a decree in favor of the libellant for its damages as aforesaid, with interest and costs and giving the libellant such other and further relief as may be just.

BURLINGHAM, VEEDER, MASTEN & FEAREY,
Proctors for Libellant.

SOUTHERN DISTRICT OF NEW YORK,
City and County of New York, } ss.:

FRED E. T. PEARNE, being duly sworn, says that he is the President of TERMINAL SERVICE CORPORATION, the libellant herein; that he has read the foregoing libel and that the same is true to the best of his knowledge, information and belief; that the sources of his information and the grounds of his belief are documents in his

possession. The reason this verification is not made by the libellant is that it is a corporation.

FRED E. T. PEARNE.

Sworn to before me, this
30th day of Nov., 1920.
LOTTIE V. JERNIGAN
Notary Public,
New York Co. No. 49
Register's No. 1143
Term expires March 30, 1921

(Endorsed) Let process issue as prayed for.
November 30/20.

J. W. M.
U. S. J.

SCHEDULE "G".

Process in Personam (foreign attachment)

THE PRESIDENT OF THE UNITED STATES OF AMERICA,

To the Marshal of the Southern District of New York, GREETING:

WHEREAS, a libel has been filed in the District Court of the United States of America for the Southern District of New York, on the 30 day of November 1920, by

TERMINAL SERVICE CORPORATION
Libellant

against

SEIRE-SEFFAIN STEAMSHIP COMPANY
Respondent

in a certain action civil and maritime for wharfage, supplies etc therein alleged to be due and owing to the said libellant, amounting to $9164.52 dollars, and praying that a citation may issue against the said respondent with clause of foreign attachment, pursuant to the rules and practice of this Court;

NOW, THEREFORE, we do hereby command you to cite and amonish the said respondent if he shall be found in your District, to appear before the said District Court at the United States Court Rooms in the United States Court House and Post Office Building, City of New York, on the 13th day of December 1920, at 10.30 o'clock in the forenoon, then and there to answer the said libel, and to

make its allegations in that behalf; and if the said respondent cannot be found, that you attach its goods and chattels to the amount sued for; and if such property cannot be found, that you attach its credits and effects to the amount sued for, in the hands of Cosmos Transport Company, Union Square Hotel Building 18 Union Square, New York, N. Y. and of Mount Royal Steamship Company Ltd 17 Battery Place New York, N. Y. Garnishee to wit: moneys & Steamship "*Gul-Dejmal*" and that you cite and admonish the said Garnishee to appear before the said District Court at the time and place aforesaid, and answer on oath as to the said debits, credits or effects of the said respondent in their hands, and to such interrogatories touching the same as may be propounded by libellant; and have you then and there this writ with your return thereon.

WITNESS, the HON. LEARNED HAND, Judge of said Court, this 30th day of November, in the year of our Lord one thousand nine hundred twenty and of our Independence the one hundred and forty-fifth

ALEX GILCHRIST JR
Clerk.

BURLINGHAM VEEDER MASTEN & FEAREY
Proctors for Libellant

(Endorsed:)

Vol. 75 Page 215 United States District Court, Southern District of New York S. S. Gul Djemal Process in Personam, with Clause of Foreign Attachment Per Curiam. Returnable Dec. 13 1920

I hereby certify that after due and diligent search, I am unable to find Siere-Seffain Steamship Company, respondent, in my District. In obedience to the within process on the 1st day of December, 1920, I attached the credits and effects of said respondent to the amount sued for, to wit: monies in the hands of the Cosmos Transport Company, Union Square Hotel Building, at No. 18 Union Square, New York, garnishee, by exhibiting to C. Rodin as the agent of the Cosmos Transport Company, Union Square Hotel Building at No. 18 Union Square, New York, the within original and at the same time delivering to and leaving with him a copy thereof.

I further certify that in obedience to the within process on December 1st, 1920, I attached the credits and effects of said respondent to the amount sued for to wit: monies in the hands of the Mount Royal Steamship Company, Ltd., garnishee, at No. 17 Battery Place, New York, by exhibiting to L. B. Garfield, as agent for said steamship company, at No. 17 Battery Place, the within original and at the same time delivering to and leaving with him a copy thereof.

I hereby further certify that in obedience to the within process I attached the steamship "Gul Djemal", her engines, etc. at Pier 45, North River, New York City, by exhibiting to Musaga Leeg, Chief Officer of said ship, the within original and at the same time delivering to and leaving with him a copy thereof.

Dated N. Y., December 13th, 1920.

THOMAS D. MCCARTHY
United States Marshal
Southern District of New York

SCHEDULE "H".

SOUTHERN DISTRICT OF NEW YORK, ss.:

THE PRESIDENT OF THE UNITED STATES OF AMERICA, To the Marshal of the Southern District of New York, Greeting: Whereas, a Libel hath been filed in the District Court of the United States for the Southern District of New York, on the 30th day of November in the year of our Lord one thousand nine hundred and twenty by

TERMINAL SERVICE CORPORATION

against

STEAMSHIP "GUL DJEMAL"

in a cause, civil and maritime, for wharfage, supplies &c amounting to $9164.52 for the reasons and causes in the said libel mentioned, and praying the usual process or monition of the said Court in that behalf to be made, and that all persons interested in the said steamship or vessel, her tackle, &c., may be cited in general and special to answer the premises, and all proceedings being had that the said steamship or vessel, her tackle, &c., may for the causes in the said petition mentioned be condemned and sold to pay the defendants of the Libellant.

YOU ARE THEREFORE HEREBY COMMANDED to attach the said steamship or vessel, her tackle, &c., and to detain the same in your custody until the further order of the Court respecting the same, and to give due notice to all persons claiming the same, or knowing or having anything to say why the same should not be condemned and sold pursuant to the prayer of the said libel, that they be and appear before the said Court, to be held in and for the

Southern District of New York, on the 13th day of December 1920 at 10.30 o'clock in the forenoon of the same day, if the same shall be a day of jurisdiction, otherwise on the next day of jurisdiction thereafter, then and there to interpose a claim for the same, and to make their allegations in that behalf. And what you shall have done in the premises, do you then and there make return thereof, together with this writ.

WITNESS, the HON LEARNED HAND, Judge of the said Court, at The City of New York, in the Southern District of New York, this 30th day of November in the year of our Lord one thousand nine hundred and twenty and of our Independence the one hundred and forty-fifth.

ALEX GILCHRIST, JR.,
Clerk.

BURLINGHAM, VEEDER, MASTEN & FEAREY,
Proctors for Libellant.

(Endorsed:)

Vol 75, Page 215. United States District Court Southern Dist. of New York "Gul Djemal" Monition ret'able Dec. 13, 1920.

SCHEDULE "H-1".

UNITED STATES DISTRICT COURT,

Southern District of New York.

Mount Royal Steamship Company, Ltd., Libellant, *against* S. S. "Gul Djemal," her engines, boilers, etc.	75-211
Vacuum Oil Company, Libellant, *against* S. S. "Gul Djemal," her engines, boilers, etc.	75-225
Union Stevedoring Corporation, Libellant, *against* S. S. "Gul Djemal," her engines, boilers, etc.	75-226
D. T. Magowan, Libellant, *against* S. S. "Gul Djemal," her tackle, apparel, furniture and freight.	75-217
Terminal Service Corporation, Libellant, *against* S. S. "Gul Djemal," her engines, tackle and apparel, and *against* Seire-Seffain Steamship Company.	75-215

Sirs—Please take notice, that we appear specially herein as proctors on behalf of the Turkish steamship

Gul Djemal, the Turkish Government, her owner, and the Adiminstration Seire-Seffain, for the sole purpose of objecting to the jurisdiction and submitting the suggestion of His Excellency the Ambassador of His Majesty the King of Spain at Washington, in charge of Turkish interests, that this Honorable Court decline jurisdiction in these actions.

Dated, December 9th, 1920.

PURRINGTON & McCONNELL,
Proctors appearing specially for the steamship *Gul Djemal*, the Turkish Government as owner, and Seire-Seffain,
No. 52 Wall Street,
New York City.

To:

MESSRS. HARRINGTON, BIGHAM & ENGLAR,
Proctors for Mount Royal Steamship Co., Ltd.,
64 Wall Street, New York City.

BARRY, WAINWRIGHT, THACHER & SYMMERS, Esqs.,
Proctors for Vacuum Oil Company,
59 Wall Street, New York City.

MESSRS. HARDY, STANCLIFFE & WHITAKER,
Proctors for Union Stevedoring Corporation,
165 Broadway, New York City.

EDWARD MAXSON, Esq.,
Proctor for D. T. Magowan,
120 Broadway, New York City.

MESSRS. BURLINGHAM, VEEDER, MASTEN & FEAREY,
Proctors for Terminal Service Corporation,
27 William Street, New York City.

SCHEDULE "I".

UNITED STATES DISTRICT COURT,

Southern District of New York.

Mount Royal Steamship Company, Ltd.,
Libellant,

against

S. S. "Gul Djemal," her engines, boilers, etc.

Vacuum Oil Company,
Libellant,

against

S. S. "Gul Djemal," her engines, boilers, etc.

Union Stevedoring Corporation,
Libellant,

against

S. S. "Gul Djemal," her engines, boilers, etc.

D. T. Magowan,
Libellant,

against

S. S. "Gul Djemal," her tackle, apparel, furniture and freight.

Terminal Service Corporation,
Libellant,

against

S. S. "Gul Djemal," her engines, tackle and apparel, and

against

Seire-Seffain Steamship Company.

Upon the annexed affidavit of James D. Brown, verified December 9th, 1920, and the suggestion of His Excellency the Royal Ambassador and High Commissioner of the Kingdom of Spain, and the certificate of the Secretary of State of the United States that the said Ambassador is duly accredited to this government, and on motion of Purrington & McConnell, proctors for claimant, sufficient cause appearing,

Let the libellants show cause at a Stated Term of this Court for the hearing of motions, to be held in Room No. 235, in the United States Court House and Post Office Building, Borough of Manhattan, City of New York, on the 10th day of December, 1920, at 10 o'clock in the forenoon, or as soon thereafter as counsel can be heard, why an order should not be entered herein vacating the several writs of attachment and of arrest heretofore issued out of this court in the said actions against the Turkish steamship *Gul Djemal* and all other property and monies within the Southern District of New York belonging to the Turkish Government, claimant of the vessel, the Administration Seire-Seffain, or their agents, and releasing said vessel and declaring her and said property and monies immune from the process of this court, and dismissing the libels herein for want of jurisdiction of this court;

Let service of this order on the libellants or their respective proctors on or before December 9th, 1920, be deemed sufficient, and in the meantime and until the hearing and determination of this motion and the entry of an order thereon, let all proceedings on the part of libellants be stayed:

And the Clerk of this court is hereby directed to accept Notices of Special Appearances from proctors for claimant herein without requiring the usual stipulation for costs pursuant to Rule 6 of the Admiralty Rules of this District.

Dated, December 8, 1920.

JOHN C. KNOX,
U. S. D. J.

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

MOUNT ROYAL STEAMSHIP COMPANY, LTD.; VACUUM OIL COMPANY; UNION STEVEDORING CORPORATION; D. T. MAGOWAN; and TERMINAL SERVICE CORPORATION

Libellants,

against

S. S. "GUL DJEMAL", etc.

STATE OF NEW YORK,
City of New York, } ss.:
County of New York,

JAMES D. BROWN, being duly sworn, deposes and says:

I am the Managing Clerk of the firm of Purrington & McConnell, proctors appearing specially for the steamship *Gul Djemal*, her owner, the Turkish Government, and am familiar with the facts in these cases.

The steamship *Gul Djemal* in the above entitled five (5) actions is detained pursuant to process issued out of this court.

The owner of the vessel, as the suggestion of the Spanish Embassy hereto annexed shows, is the Government of Turkey, which Government desires that the vessel be released from seizure in order that she may sail back to Turkey as soon as possible.

WHEREFORE, this order to show cause is respectfully requested and prayed for so that the claim of the Turkish Government may be presented as expeditiously as possible, and the vessel immediately released from her attachments.

JAMES D. BROWN.

Sworn to before me this
day of December, 1920.
ED. E. VINCENT,
Notary Public, Kings No. 4.

SCHEDULE "J".

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

MOUNT ROYAL STEAMSHIP COMPANY, LTD.,
Libellant,

against

S. S. "GUL DJEMAL," her engines, boilers, etc.

VACUUM OIL COMPANY,
Libellant,

against

S. S. "GUL DJEMAL," her engines, boilers, etc.

UNION STEVEDORING CORPORATION,
Libellant,

against

S. S. "GUL DJEMAL," her engines, boilers, etc.

D. T. MAGOWAN,
Libellant,

against

S. S. "GUL DJEMAL," her tackle, apparel, furniture and freight.

TERMINAL SERVICE CORPORATION,
Libellant,

against

S. S. "GUL DJEMAL," her engines, tackle and apparel, and

against

SEIRE-SEFFAIN STEAMSHIP COMPANY.

To the Honorable the Judges of the United States District Court for the Southern District of New York:

The Ambassador of His Majesty the King of Spain at Washington, by Messrs. Purrington & McConnell, proctors appearing specially for claimant of the steamship *Gul Djemal* and the respondent in the above entitled actions, in each of which said vessel has been seized under process of the United States District Court for the Southern District of New York, respectfully makes the following suggestions to this Honorable Court:

The Turkish Government is a sovereign nation at peace with the United States of America. During the late war between the Entente nations and the Central Powers, diplomatic relations between the United States and Turkey were suspended without, however, any declaration of war between the two countries, and the Ambassador of His Majesty the King of Spain at Washington, upon request of the Turkish Government to His Majesty the King of Spain, took charge and still has charge in the United States of the interests of the Turkish government and of its citizens.

At all times mentioned in the libel in each of said actions, the Administration Seire-Seffain was and still is the name of a steamship line owned and managed by and in the possession of the Turkish Government and is an integral part or branch of the said Government; the said steamship *Gul Djemal*, now at the port of New York, is owned, possessed and managed by said Government, is in the possession of the said Government of Turkey, in the person of a Master employed and paid by said Government, and is wholly manned and operated by officers and crew employed and paid by said Government; her navigating officer is a duly commissioned Lieutenant of the Turkish navy, specially assigned to said vessel by the Turkish Ministry of Marine, and the vessel is

under a short time charter for a single voyage, expiring in forty-five days from its inception on or about October 6th, 1920.

WHEREFORE, it is respectfully suggested to the court and prayed that the said steamship be released from any seizure and declared immune from process, and that this Honorable Court decline to take jurisdiction of the above entitled causes.

Done at the Embassy of His Majesty the King of Spain at Washington, D. C., this 8th day of December, 1920.

(signed) JUAN RIANO.

(Seal of Spanish Embassy)

No. 3246

UNITED STATES OF AMERICA

(Insignia)

Department of State

TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETING:

I Certify That Senor Don Juan Riano, whose name is subscribed to the paper hereto annexed, is duly accredited to this Government as Ambassador Extraordinary and Plenipotentiary of the Kingdom of Spain*

IN TESTIMONY WHEREOF, I, Bainbridge Colby, Secreteary of State, have hereunto caused the Seal of the Department of State to be affixed and my name subscribed by the Chief Clerk of the said Department, at the City of Washington, this 8th day of December, 1920.

(Seal of Department of State)

BAINBRIDGE COLBY
Secreteary of State
By BEN G. DAVIS
Chief Clerk.

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* For the contents of the annexed document the Department assumes no responsibility.

SCHEDULE "K".

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

MOUNT ROYAL STEAMSHIP COMPANY, LTD., Libellant, *against* S. S. "GUL DJEMAL", her engines, boilers, etc.	Petition

Your Petitioner, the libellant herein, by Harrington, Bigham & Englar, its proctors, respectfully represents that the above action was instituted in this Court by your petitioner by the filing of a libel with the Clerk of this Court on December 2, 1920; that, by said action, your petitioner seeks to recover Sixty-six thousand eight hundred forty-two and 30/100 Dollars ($66,842.30), representing funds advanced to the ship, on the credit of the ship, for coal and other supplies.

Your petitioner further respectfully represents that the S. S. *Gul Djemal* was arrested on December 2, 1920, by the United States Marshal for the Southern District of New York, pursuant to process issued in accordance with the prayer of said petitioner's libel, and is still in the custody of said marshal; that His Excellency, Senor Don Juan Riano, the Royal Ambassador and High Commissioner of the Kingdom of Spain to the United States

of America, filed with this Court on December 8, 1920, a suggestion, through Messrs. Purrington & McConnell, appearing specially for the claimant of the S. S. *Gul Djemal* (the Government of Turkey), which suggestion states the following:

> "The Turkish Government is a sovereign nation at peace with the United States of America. During the late war between the Entente nations and the Central Powers, diplomatic relations between the United States and Turkey were suspended without, however, any declaration of war between the two countries, and the Ambassador of His Majesty, the King of Spain, at Washington, upon request of the Turkish Government to His Majesty, the King of Spain, took charge and still has charge in the United States of the interests of the Turkish Government and of its citizens.
>
> "At all times mentioned in the libel in each of said actions, the Administration Seire-Seffain was and still is the name of a steamship line owned and managed by and in the possession of the Turkish Government and is an integral part or branch of the said Government; the said steamship *Gul Djemal*, now at the port of New York, is owned, possessed and managed by said Government, is in the possession of the said Government of Turkey, in the person of a master employed and paid by said Government, and is wholly manned and operated by officers and crew employed and paid by said government; her navigating officer is a duly commissioned lieutenant of the Turkish Navy, specially assigned to said vessel by the Turkish Ministry of Marine, and the vessel is under a short time charter for a single voyage, expiring in forty-five days from its inception on or about October 6th, 1920."

Your petitioner further respectfully represents that the S. S. *Gul Djemal* was, on the 4th day of September, 1920, chartered by H. Hussein Bey, the Managing Director of Seire-Seffain Steamship Company of Constanti-

nople, the owner of the S. S. *Gul Djemal* to M. George Dedeoglu for a voyage from Constantinople to New York and return, a copy of which charter party is annexed hereto and marked "Petitioner's Exhibit 1."

Your petitioner further respectfully represents on information and belief that the United States of America has severed diplomatic relations with the Government of Turkey and that said relations have not been resumed; that the Government of Turkey in respect to its property in this country has no right to invoke the aid of the Courts of the United States of America either directly or through the good offices of the Ambassador of any other nation to the United States of America; and that the said suggestion of the Spanish Ambassador (whose good offices are limited to the protection of Turkish Nationals in this country) is not properly before this Court.

Your petitioner further respectfully represents that the Department of State of the United States of America certified merely that Senor Don Juan Riano is duly accredited to this Government as Ambassador Extraordinary and plenipotentiary of the Kingdom of Spain, and that said certification nowhere certifies the status of said Ambassador in relation to the property of the Turkish Government, and expressly denies responsibility for the contents of the suggestion filed by the Spanish Ambassador. Your petitioner, therefore, respectfully suggests to this Court that, inasmuch as the status of the Spanish Ambassador in relation to the Turkish Government is not certified by the Department of State of the United States of America, such suggestion is insufficient.

Your petitioner further respectfully represents, on information and belief, that, in representing the Turkish Government in the present instance, His Excellency, the Ambassador of the Kingdom of Spain to the United States of America, is acting in a personal capacity and not in any official capacity as Ambassdor of the King-

dom of Spain to the United States of America, and that there is no impropriety in raising an issue on the facts set forth in the suggestion of the Spanish Ambassador filed herein. Your petitioner, therefore, traverses the allegations contained in said suggestion.

Your petitioner further respectfully represents that, if the Spanish Ambassador appears officially as Ambassador and not in a personal capacity, any indelicacy involved in traversing the suggestion filed by the Spanish Ambassador herein is imposed on your petitioner by virtue of the direct suggestion of said Ambassador to this Court, rather than through a suggestion verified as to fact by the State Department of the United States; that if the latter course were pursued, your petitioner could raise an issue of fact before said Department of State or before this Court, on such suggestion of the Department of State of the United States, without any undue discourtesy to the dignity of a foreign sovereign, but that the direct suggestion of said Spanish Ambassador precludes your petitioner from such action and your petitioner hereby respectfully objects to the admissibility of a direct suggestion by the Spanish Ambassador.

Your petitioner further respectfully represents that the navigating officer, if he is a duly commissioned lieutenant of the Turkish Navy, especially assigned to said vessel by the Turkish Ministry of Marine, is entitled to no official recognition as such in the Courts of this country, and the property of the Turkish Government can borrow no protection by virtue of his official presence.

Your petitioner further respectfully represents, on information and belief, that, although the Turkish Government may be interested in the Seire-Seffain Steamship Company, the Seire-Seffain Steamship Company, a separate legal entity, cannot acquire for its property the sovereign prerogative of immunity from legal process by virtue of the interest of the Turkish Government.

Your petitioner respectfully refers to the status of the United States Emergency Fleet Corporation, which, although exercising powers by direct delegation from the President of the United States, based on Congressional legislation, has, in spite of its suggestions of immunity, been held amenable to the process of the American Courts.

Your petitioner further respectfully represents, on information and belief, that the S. S. *Gul Djemal* may be operated and managed for account of said Seire-Seffain Steamship Company, or may be manned and operated by a master, officers, engineers and crew constructively employed and paid by the Turkish Government, but in fact directly employed and paid by Seire-Seffain Steamship Company, which is a separate legal entity, distinct from the Turkish Government; and that, although said Turkish Government may in the last analysis allow credit in accounting to said Seire-Seffain Steamship Company for the compensation of said officers and crew, said officers and crew may, in fact, be employees of said Seire-Seffain Steamship Company; and further, that, although the S. S. *Gul Djemal* may be constructively in the possession of the Government of the Kingdom of Turkey, nevertheless the said S. S. *Gul Djemal* may since have been and may be now in the actual possession of Seire-Seffain Steamship Company for account of the Government of Turkey; in other words, your petitioner represents that said S. S. *Gul Djemal* may be operated and managed as a commercial carrier for hire just as the ships of the United States of America are being operated as commercial carriers for hire by private American steamship companies as agents, and your petitioner refers to the policy of the United States of America, declared by statutes approved March 9, 1920, and June 5, 1920, to recognize the liability of its merchant ships, although it substitutes a convenient ac-

tion *in personam* against the United States of America in lieu of the action *in rem*.

Your petitioner further respectfully represents that, without in any way impugning the integrity of the said Ambassador of the Kingdom of Spain to the United States of America or the conclusions set forth by said Ambassador in the above suggestion, said statements of the said Ambassador, as conclusions, may, to his conception of the legal significance of the word "possession", be correct, but that the facts on which said conclusions are reached, and the issue whether or not said S. S. *Gul Djemal* is actually in the possession of the Turkish Government, in the persons of officers and a crew employed and paid by said Turkish Government, should be more fully before this Court before the prayer of the said Ambassador of the Kingdom of Spain for immunity from process in this Court can be properly determined.

Your petitioner further respectfully represents, on information and belief, that by the terms of the Treaty about to be concluded between the Entente Nations and the Turkish Government, the S. S. *Gul Djemal* will become the property of the said Entente Nations; that said S. S. *Gul Djemal* is now practically under the control of said Entente Nations, acting through the Inter-Allied Maritime Transport Council, an international body created by the Entente Nations; reference being made to the consent of the Entente Powers attached to said charter party. Your petitioner further represents that the S. S. *Gul Djemal* was allowed to depart from Constantinople only on guarantees given by the Seire-Seffain Steamship Company to the Entente Nations that the ship would return to Constantinople; that the British Ministry of Shipping in New York is communicating with the British Ministry of Shipping in London, with a view to the protection of the interests of the Entente Nations in the S. S. *Gul Djemal;* that the S. S. *Gul Djemal* has now on board one thousand tons of cargo approxi-

mately, on which the freight has been prepaid to your libellant, as agent of the charterer of said ship; that the charterer has not instigated the present appeal for immunity; that the S. S. *Gul Djemal*, irrespective of any release from the custody of the Marshal, may in her present condition, unless the discharge of cargo is contemplated, experience considerable delay in clearing from the Port of New York; that the British Ministry of Shipping in New York is expecting advices by cable from the British Ministry of Shipping in London, and your petitioner respectfully suggests to this Honorable Court that the interests of the Entente Nations, with whom the United States of America was associated in the war against the German Government, which was allied with the Turkish Government, are paramount to the interests of the Turkish Government, with which the United States of America is on non-amicable terms; and your petitioner further represents that said interests of the Entente Nations and the interest of citizens of the United States and citizens of friendly Powers, who have advanced to the S. S. *Gul Djemal*, on the credit of the ship, One hundred thousand Dollars ($100,000) approximately, are paramount to the interests of the Turkish Government, and that considerations of comity, which are predicated on respect for foreign sovereigns, do not require a recognition in the United States of America by this Honorable Court of a prerogative of sovereignty, in the Turkish Government, based on an alleged ownership and possession which the Turkish Government could not successfully assert in the Port of Constantinople.

Your petitioner respectfully represents that the relief prayed for should be denied, for the following reasons:

1. The Turkish Government is not qualified to appear before this Court as a claimant of the S. S. *Gul Djemal;*

2. The Turkish Government is not qualified to claim immunity in this Court in the person of a Turkish Naval Officer;

3. The certificate of the Department of State of the United States of America, attached to the said suggestion of the Spanish Ambassador, is not sufficient in respect to the authority or power of the Spanish Ambassador to act on behalf of the Government of Turkey in respect to the latter's property, so the suggestion is impotent;

4. The protection of the property of the Government of Turkey in the United States of America is not the recognized province of the Spanish Ambassador, so the suggestion herein is impotent;

5. The facts alleged in the suggestion are not verified by the Department of State of the United States of America, so the suggestion is impotent;

6. The said suggestion by the Spanish Ambassador is made in a personal and not an official capacity and is, therefore, inconclusive on this Honorable Court;

7. There is no suggestion by the United States of America before this Honorable Court that the S. S. *Gul Djemal* should be released from arrest under the process of this Court;

8. The S. S. *Gul Djemal* is neither a ship in the possession of a recognized foreign governmental official, nor a ship engaged in a governmental enterprise;

9. The S. S. *Gul Djemal*, owned and possessed by the Seire-Seffain Steamship Company, is subject to the process of this Court.

10. Considerations of comity cannot be predicated on the doctrine of respect for a foreign sovereign in the present instance and do not require the release of the S. S. *Gul Djemal* to the detri-

ment of American citizens and the possible detriment to the interest of the Entente Nations.

WHEREFORE, your petitioner respectfully prays this Honorable Court not to discharge the said S. S. *Gul Djemal* from the custody of the United States Marshal for the Southern District of New York under the process of this Court, pending the orderly course of the litigation under the libel herein, and your petitioner further respectfully prays, in the alternative, that this Court, before the S. S. *Gul Djemal* is declared immune from the process of this Court, permit the traverse of the allegations in said suggestion contained, so that the issues of fact and law may be determined by this Court, or that this Honorable Court require the presentation of a suggestion containing a full statement of the status of the S. S. *Gul Djemal* and the Seire-Seffain Steamship Company, supported by authenticated documents, and that said suggestion contain a certificate by the Department of State of the United States of America that the Ambassador to the United States from the Kingdom of Spain is recognized, by the United States of America, as qualified to file a suggestion on behalf of the Government of Turkey in respect to property belonging to the Government of Turkey situated in the United States of America.

And your petitioner will ever pray, etc.

HARRINGTON, BIGHAM & ENGLAR,
Proctors for Petitioner,
No. 64 Wall Street,
Borough of Manhattan,
New York City.

STATE OF NEW YORK }
County of New York } ss.:

ONNIK NEVROUZ, being duly sworn, deposes and says:

That he is Treasurer of MOUNT ROYAL STEAMSHIP COMPANY, LTD., the corporation petitioner herein; that he has read the foregoing petition and knows the contents thereof and that the same is true, to the best of his knowledge, information and belief.

That the reason this verification is made by deponent and not by Mount Royal Steamship Company, Ltd., is that said Mount Royal Steamship Company, Ltd., is a corporation.

ONNIK NEVROUZ.

Sworn to before me this 10th day of December, 1920.

IRENE C. HOLMES,
(N. S.) Notary Public,
Kings Co. 172.
Cert. filed N. Y. Co. 438.

PETITIONER'S EXHIBIT 1.

TRANSLATION.

S. S. "GUL DJEMAL".

CHARTER PARTY.

It is this day mutually agreed between H. HUSSEIN BEY, the Managing Director of Seire-Seffain S. S. Company of Constantinople, the Owners of S. S. "GUL DJEMAL" of (5071) tons gross, on the one part, and M. GEORGE DEDE OGLU, resident at Arabian Han No 133 hereafter called the Charterer, on the other part, for a voyage from Constantinople to New York and return, as follows:—

Art. 1. The Owners agree to let and the Charterer agrees to hire the S. S. "GUL DJEMAL" for a voyage from Constantinople to New York and return.

Art. 2. S. S. "GUL-DJEMAL" shall be insured against all risks for a sum of (300,000) Three Hundred Thousand Pounds Turkish in the name of the Seire-Seffain Company for a voyage to New York and return. All insurance expenses shall be paid by the Charterer. The Seire-Seffain will not sail the ship unless an Insurance Policy is obtained by the Charterer, who will be responsible for all expenses and losses which may arise in respect of the above delay.

Art. 3. M. George Dédé Oglu agrees to hire on (Time charter) the S. S. "GÜL-DJEMAL" for a sum of (50000) Fifty thousand Pounds Turkish per month. All expenses as coal, water, oil, and other materials necessary for the sailing of the above ship—except the payment of the

crew of S. S. "GUL-DJEMAL" shall be borne by him—M. DEDE OGLU—thirty days being considered one month.

Art. 4. The Time of the Charter Party is a month and a half, and begins from the date of the delivery of S. S. "GUL-DJEMAL" to M. DEDE OGLU, the Charterer who will use the above ship for the purpose of transport of passengers and cargo from Constantinople to New York and return.

Art. 5. The Charterer, M. DEDE OGLU, undertakes to pay the agreed sum (1667) sixteen hundred and sixty seven Pounds Turkish per day in case he will not be able to redeliver the ship to the Owners at Constantinople, after the elapse of forty five days. If the steamer arrives back before the elapse of forty five days, Seire-Seffain agrees to return the said sum per day. It is hereby agreed that S. S. "GUL-DJEMAL" shall be redelivered to the Owners, in the same perfect condition as when received, on her arrival at Constantinople. If not a demurrage of 500£t Five hundred Pounds Turkish per day shall be paid by the Charterer. The Owners have the right to detain the cargo loaded on board of S. S. "GUL-DJEMAL", in case the Charterer is not able to pay indemnities of demurrage, and the hire of the surplus days of the Charter Party.

Art 6. The Owners undertake to deliver the above ship to the Charterer on the 5th Oct. ,1920, except in case of force majeur. The Payment of hire begins from the day after the delivery of the above ship. The Charterer, M. DEDE OGLU agrees to pay in full, in cash the sum of (75000) Seventy five Thousand Pounds Turkish to the Owners at Constantinople on 25th Sept., 1920, as the payment of hire of one month and half.

Art. 7. M. George Dédé Oglu undertakes to pay the sum of (5000£t) Five Thousand Pounds Turkish as a quarantee to the Owners within 24 hours after the signing of this Charter Party. It is mutually agreed that the Owners will consider themselves free to record the said sum of guarantee as an income to their Company in case the Charterer will not be able to pay in full the payment of hire on the 25th Sept.-1920. It is also agreed that in case the Allies object to the sailing of the ship after the payment of hire, the Owners will have to return the sum of Guarantee to the Charterer.

Art. 8. The permission which will be given by the British Captain of the Port of Constantinople authorizing the sailing of the above ship to America Will be accepted as an indisputable document by both Parties.

Art. 9. S. S. "Gul-Djemal" will be examined by the Officials appointed by the British Captain of the Port of Constantinople in presence of Official or Officials of Seire-Seffain Company and those of M. Dédé Oglu. In case a difference arises in respect of the necessary equipments and accommodation for the sailing of this ship, the decision which will be given by the British Captain of the Port of Constantinople, will be respected by both parties.

Art. 10. It is hereby agreed that the Charterer will have to sail S. S. "Gul-Djemal" after the elapse of fifteen days of the arrival of the said ship at New York. In case he fails to do so, the Master of the said ship, will provide all the sailing materials and return without being obliged to take any legal proceedings. The Charterer Dédé Oglu, will have no right to claim any losses or indemnities with regard to such like return voyage of the

said steamer. It is also agreed that the Charterer will pay the sum of (20,000) twenty thousand Pounds Turkish as a guarantee against the expenses of such like return voyage, in case he fails to respect the rights of this article of this charter party.

Art. 11. The deck and engine Officers shall be fed free of charge by the Charterer from the day of their departure from Constantinople to the day of the arrival back. But the food of the crew of the said ship shall be supplied by the Owners.

Art. 12. Any difference which may arise in respect of this Charter-Party shall be settled at Constantinop'e by arbitrators who will be appointed by both Parties.

Art. 13. This Charter-Party has been exchanged in duplicate on this day of 4th September, 1920.

"This Charter is made with the Consent of the Allied Powers on the express conditions that in the event of the coming into execution of Article 258 (1) and (2) of the 'Conditions of Peace' between the Allied Powers and Turkey the same shall cease and that all claims ipso facto between all parties concerned respecting ship, cargo and freight, shall be referred to, and settled by Arbitration.

No claim whatsoever in respect of the Charter and the consequences thereof shall attach to the Allied Powers or to any Officer in the service of the said Powers or any of them.

Charter to be signed in the Offices of the Allied Captains of the Port and witnessed by British Captain of

the Port and another Allied Captain of the Port, if desirable."

WITNESSED.

15 Sept. 1920

(SIGNED) HAROLD WOOD.
Lieut. R.N.V.R.

(CANCELLED STAMPS)
(SIGNED) H. HUSSEIN BEY

WITNESS.
(SIGNED) GEO. T. ELLEL
CAP. R. N.
British Captain of the Port
Constantinople
(SEAL) BRITISH CAPTAIN OF PORT
15 SEP 1920
CONS/PLE

(SIGNED) M. GEORGE DEDE OGLU

EXTRA CLAUSE

If vessel is detained longer than 15 days at New York Charterer will pay Master sixteen hundred and sixty seven pounds Turkish for each extra day.

(SIGNED) M. GEORGE DEDE OGLU

Witness 15.9.20
(SIGNED) GEO. T. ELLEL
Cap. R.N.
British Captain of the
Port Constantinople

(SIGNED) H. HUSSEIN BEY

SCHEDULE "L".

Address Official Communications To
The Secretary of State
Washington, D. C.
(Department Seal)

Department of State
Washington
December 16 1920.

Messrs. Purrington & McConnell,
Counsellors at Law,
52 Wall Street,
New York, N. Y.

Gentlemen:

The Department has received your letter of the 10th instant requesting data upon existing relations between the United States and Turkey.

In reply I beg to state that although there was no declaration of war between the two countries, on the 20th of April 1917, upon the initiative of the Turkish Government, diplomatic relations were severed and have not since been resumed.

Upon the severance of those relations, the Swedish Legation at Constantinople took charge of American interests in Turkey, and the Spanish Embassy at Washington assumed charge of Turkish interests in the United States.

After the conclusion of an Armistice between the Entente Powers and Turkey, an American High Commissioner was sent to Constantinople, and some of the American Consuls returned to their former posts. But the High Commissioner has no formal diplomatic relations with the Turkish Government and these Consular Officers, although performing certain Consular functions,

have no exequaturs and maintain no official relations with the local authorities.

I am, Sir,

Your obedient servant,
For the Acting Secretary of State:
(Signed) ALVEY A. ADEE
Second Assistant Secretary.

711/67/14

SCHEDULE "M".

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

MOUNT ROYAL STEAMSHIP COMPANY, LTD.,
Libellant,

against

S. S. "GUL DJEMAL," her engines, boilers, etc.
and four other causes

HARRINGTON, BIGHAM & ENGLAR, for Libellant, Mount Royal Steamship Company;
HARDY, STANCLIFFE & WHITAKER, for Libellant, Union Stevedoring Corporation;
PURRINGTON & MCCONNELL, appearing specially for Claimant of S. S. "Gul Djemal" and the respondents.

KNOX, *D. J.*: The question as to whether I should, in view of the suggestion filed herein by the Spanish Ambassador upon behalf of the Turkish Government, release the *Gul Djemal* from arrest is one of considerable importance and not free from doubt.

It is my opinion, however, that the motion should be denied not only as a matter of law but by reason of the practical consideration that by denying the motion the ship can upon appeal have corrected any error now made by me. If I were to grant the motion and such action should hereafter be held by the appellate court to be

erroneous the libellants would be without recourse to the ship.

The urgency of a prompt decision makes impossible any extended discussion of the law involved. I may say, however, that it does seem to me that in the very nature of things the relations now existing between this country and the Government of Turkey must, in some respects, differ from those that obtain between the United States and a government with which diplomatic relations are not severed.

If a breach of such relations means simply that thereafter a government may by indirection obtain and secure for itself the same rights and privileges that would, but for the breach, be directly accorded it, the severance of relations is an idle ceremony so far as comity between nations is concerned.

In recognition of that comity which, under the law of nations, exists between friendly states, this Court, in litigations such as *The Carlo Poma*, 259 Fed. 369, and kindred cases, has from time to time released from arrest the property of foreign governments when the ambassadors of such governments have suggested to us the sovereign character of the ownership thereof.

When, however, a foreign government has seen fit to sever diplomatic relations with the United States, I am of opinion that it is not the function of the Court to entertain unofficial suggestion made upon behalf of such government.

The Courts of the United States are in no position to be acquainted with the degree of strain that in any particular instance may exist between this Government and one that has severed relations with us; and while, so far as appears, the release of the *Gul Djemal* would not embarrass the Department of State, I am, nevertheless, reluctant to establish a precedent that in conceivable circumstances might embarrass that Department.

It is true that a letter addressed to proctors for the ship by the State Department recognizes the fact that the interests of Turkey within the United States are being looked after by the Spanish Ambassador, and it is he who now suggests to the Court that the *Gul Djemal* is owned by the Turkish Government. I am desirous of according all consideration to the Ambassador and his Government, but feel constrained to suggest that any protection to Turkish interests here involved should be by way of representations to the Department of State, and to say that in his present suggestion the Ambassador speaks not as the personal representative of the King of Spain, but unofficially, by virtue of the good offices which he has placed at the disposal of the Government of Turkey. In such capacity I must respectfully decline to adopt his suggestion, and for the relief he asks relegate him to the Department of State.

December 22, 1920.

JNO. C. KNOX,
U. S. District Judge.

SCHEDULE "N".

EMBAJADA DE ESPANA

WASHINGTON

23-23

WASHINGTON, D. C., DECEMBER 23, 1920.

My dear Mr. Secretary:

Subsequent to the severance of diplomatic relations between the Turkish Government and the United States, His Majesty's Government at Madrid officially instructed me to assume charge of Turkish Government interests in the United States, in which capacity I have had the honor to communicate and treat with this Department continuously.

I now have the honor to inform you that the steamship "GUL DJEMAL," which is owned, manned and operated by the Turkish Government, had been seized under process issued out of the United States District Court for the Southern District of New York.

I have received cabled instructions from Mis Majesty's Government at Madrid, acting at the instance of the Turkish Government at Constantinople, to do everything possible in my official capacity as the representative of the Turkish Government in the United States, to obtain the vessel's release because she is owned, manned and operated by the Turkish Government.

The Department would, therefore, honor me by advising that it recognizes the fact that I am officially in charge of the Turkish Governmental interests in the United States during the suspension of diplomatic relations between the two Governments; that no declaration

of war has been made by either Government as against the other, and that the treaties between the two nations are still in force.

Believe me,
My dear Mr. Davis,
Very sincerely yours,
(signed) JUAN RIANO

The Honorable
NORMAN H. DAVIS,
Acting Secretary of State of the United States.

SCHEDULE "O".

DEPARTMENT OF STATE

WASHINGTON

WASHINGTON, D. C., DECEMBER 24, 1920.

My dear Mr. Ambassador:

I beg to acknowledge receipt of your note of December 23, 1920 in which you state that the steamship "GUL DJEMAL" which is owned, manned and operated by the Turkish Government has been seized under process issued out of the United States District Court for the Southern District of New York and that you have been instructed by His Majesty's Government at Madrid acting at the instance of the Ottoman Government to do everything possible to obtain the release of the vessel mentioned. It is understood that you desire a statement that the Department recognizes that you are "officially in charge of the Turkish governmental interests in the United States during the suspension of the diplomatic relations between the two governments; that no declaration of war has been made by either government as against the other, and that the treaty between the two countries are still in force."

Inasmuch as you have for a considerable period been Ambassador recognized by the Department as representing Turkish interests in the United States the Department will of course be glad to give consideration to any representation which you desire to make to this government on behalf of the Ottoman government in relation to the detention of the steamship "GUL DJEMAL." Although the diplomatic relations between the government of the United States and the government of Turkey were

severed on the initiative of the Turkish government no declaration of war has as you doubtless are aware been made by either government against the other. With respect to the status of the treaties between the United States and Turkey, I beg to say that in view of the interruption of relations between the two countries the Department prefers to refrain at this time from discussing the status of these treaties.

I am, my dear Mr. Riano,

Very sincerely yours,
(signed) NORMAN H. DAVIS

To SEÑOR DON JUAN RIANO,
Ambassador of His Majesty the King of Spain
at Washington

SCHEDULE "P".

UNITED STATES DISTRICT COURT,

Southern District of New York.

Mount Royal Steamship Company, Ltd.,
Libellant,

against

S. S. "Gul Djemal," her engines, boilers, etc.

Vacuum Oil Company,
Libellant,

against

S. S. "Gul Djemal," her engines, boilers, etc.

Union Stevedoring Corporation,
Libellant,

against

S. S. "Gul Djemal," her engines, boilers, etc.

D. T. Magowan,
Libellant,

against

S. S. "Gul Djemal," her tackle, apparel, furniture and freight.

Terminal Service Corporation,
Libellant,

against

S. S. "Gul Djemal," her engines, tackle and apparel, and

against

Seire-Seffain Steamship Company.

Upon the annexed affidavit of Frank J. McConnell, verified December 27th, 1920, and the suggestion of His

Excellency the Royal Ambassador and High Commissioner of the Kingdom of Spain, and the certificate of the Secretary of State of the United States that the said Ambassador is duly accredited to this government; letter of Secretary of State to Purrington & McConnell, and carbon copy of letter addressed by the Spanish Ambassador to the Department of State of the United States, and copy of reply of the said Department of State to the Spanish Ambassador, and on motion of Purrington & McConnell, proctors for claimant, sufficient cause appearing,

Let the libellants show cause at a Stated Term of this Court for the hearing of motions, to be held in Judges Chambers of Court Room No. 2 in the United States District Court, Woolworth Building, No. 233 Broadway, in the Borough of Manhattan, City of New York, on the 30th day of December, 1920, at 3 o'clock in the afternoon, or as soon thereafter as counsel can be heard, why the motion made by the claimant and decision thereon should not be reheard and an order entered herein vacating the said order and the several writs of attachment and of arrest heretofore issued out of this court in the said actions against the Turkish steamship *Gul Djemal* and all other property and monies within the Southern District of New York belonging to the Turkish Government, claimant of the vessel, the Administration Siere-Seffain, or their agents, and releasing said vessel and declaring her and said property and monies immune from process of this court, and dismissing the libels herein for want of jurisdiction of this court;

Let service of this order on the libellants or their respective proctors on or before December 29th, 1920, be deemed sufficient, and in the meantime and until the rehearing and determination of this motion and the entry of an order thereon, let proceedings on the part of all libellants against the *Gul Djemal* be stayed;

And the Clerk of this court is hereby directed to accept Notice of Special Appearances from proctors for claimant herein without requiring the usual stipulation for costs pursuant to Rule 6 of the Admiralty Rules of this District.

Dated, December 29th, 1920.

(Signed) JNO. C. KNOX,
U. S. D. J.

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

MOUNT ROYAL STEAMSHIP COMPANY, LTD.; Vacuum Oil Company; Union Stevedoring Corporation; D. T. Magowan; and Terminal Service Corporation,
Libellants,

against

S. S. "GUL DJEMAL," etc.

STATE OF NEW YORK,
City of New York,
County of New York, } ss.:

FRANK J. MCCONNELL, being duly sworn, deposes and says: I am a member of the firm of Purrington & McConnell, proctors appearing specially for the steamship *Gul Djemal*, her owner, the Turkish Government, and am familiar with the facts in these cases.

The steamship *Gul Djemal* in the above entitled five (5) actions is detained pursuant to process issued out of this court, although application for her release was considered by this court upon the suggestion of the Spanish Ambassador, which application and motion was denied.

The owner of the vessel, as the suggestion of the Spanish Embassy annexed to the original application shows, is the Government of Turkey, which Government

desires that the vessel be released from seizure in order that she may sail back to Turkey as soon as possible.

Subsequent to the presentation to and refusal of this Honorable Court to vacate process issued against *Gul Djemal*, his Excellency, the Ambassador, of His Majesty the King of Spain at Washington, on December 23rd, 1920, formally communicated with the Department of State of Washington, D. C., requesting an official acknowledgment and verification by the said Department of State of the United States that it recognized the said Ambassador as representing Turkish interests in the United States. An original copy of the letter of the said Ambassador addressed to the Honorable Norman H. Davis, Acting Secretary of State of the United States, is annexed hereto and marked Annex "A"; and copy of the reply thereto, dated December 24th, 1920 (the original of which is retained in the files of the Embassy), addressed to the Spanish Ambassador, officially reciting recognition of the said Ambassador by the Department of State, is annexed hereto and marked Annex "B."

Wherefore, an application for a rehearing of the merits of this controversy is respectfully presented to this Honorable Court and an order to show cause is requested and prayed for so that the claim of the Turkish Government may be presented as expeditiously as possible, and the vessel immediately released from her attachments.

(Signed) Frank J. McConnell.

Sworn to before me this 27th day of December, 1920.

James D. Brown,
Notary Public,
New York County.
County Clerk's No. 623.
Register No. 1651.
(Seal)

ANNEX "A".

EMBAJADA DE ESPANA

WASHINGTON

23-23

WASHINGTON, D. C., DECEMBER 23, 1920.

My dear Mr. Secretary:

Subsequent to the severance of diplomatic relations between the Turkish Government and the United States, His Majesty's Government at Madrid officially instructed me to assume charge of Turkish Governmental interests in the United States, in which capacity I have had the honor to communicate and treat with this Department continuously.

I now have the honor to inform you that the steamship "GUL DJEMAL," which is owned, manned and operated by the Turkish Government, had been seized under process issued out of the United States District Court for the Southern District of New York.

I have received cabled instructions from His Majesty's Government at Madrid, acting at the instance of the Turkish Government at Constantinople, to do everything possible in my official capacity as the representative of the Turkish Government in the United States, to obtain the vessel's release because she is owned, manned and operated by the Turkish Government.

The Department would, therefore, honor me by advising that it recognizes the fact that I am officially in charge of the Turkish Governmental interests in the United States during the suspension of diplomatic relations between the two Governments; that no declaration of war has been made by either Government as against

the other, and that the treaties between the two nations are still in force.

Believe me,
My dear Mr. Davis,
Very sincerely yours,
(signed) JUAN RIANO

The Honorable
NORMAN H. DAVIS,
Acting Secretary of State of the United States.

ANNEX "B".

DEPARTMENT OF STATE

WASHINGTON

WASHINGTON, D. C., DECEMBER 24, 1920.

My dear Mr. Ambassador:

I beg to acknowledge receipt of your note of December 23, 1920, in which you state that the steamship "GUL DJEMAL" which is owned, manned and operated by the Turkish Government has been seized under process issued out of the United States District Court for the Southern District of New York and that you have been instructed by His Majesty's Government at Madrid acting at the instance of the Ottoman Government to do everything possible to obtain the release of the vessel mentioned. It is understood that you desire a statement that the Department recognizes that you are "officially in charge of the Turkish governmental interests in the United States during the suspension of the diplomatic relations between the two governments; that no declaration of war has been made by either government as against the other, and that the treaty between the two countries are still in force."

Inasmuch as you have for a considerable period been Ambassador recognized by the Department as representing Turkish interests in the United States the Department will of course be glad to give consideration to any representation which you desire to make to this government on behalf of the Ottoman government in relation to the detention of the steamship "GUL DJEMAL." Although the diplomatic relations between the government of the United States and the government of Turkey were severed on the initiative of the Turkish government no

declaration of war has as you doubtless are aware been made by either government against the other. With respect to the status of the treaties between the United States and Turkey, I beg to say that in view of the interruption of relations between the two countries the Department prefers to refrain at this time from discussing the status of these treaties.

I am, my dear Mr. Riano,

Very sincerely yours,
(signed) NORMAN H. DAVIS

To SEÑOR DON JUAN RIANO,
Ambassador of His Majesty the King of Spain at
Washington

SCHEDULE "Q".

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

MOUNT ROYAL STEAMSHIP COMPANY, LTD.,
Libellant,

against

S. S. "GUL DJEMAL," her engines, boilers, etc.
and four other causes

Upon reargument of motion to release S. S. *Gul Djemal* from arrest.

HARRINGTON, BIGHAM & ENGLAR, for Libelant, Mount Royal Steamship Company;

HARDY, STANCLIFFE & WHITAKER, for Libelant, Union Stevedoring Corporation;

PURRINGTON & MCCONNELL, appearing specially for Claimant of S. S. *Gul Djemal* and the respondents.

KNOX, D. J.: Since rendering my decision of December 22, 1920, wherein I denied the motion to release the *Gul Djemal* from arrest, the following letters were exchanged between the Spanish ambassador and the Acting Secretary of State:—

EMBAJADA DE ESPANA

WASHINGTON

WASHINGTON, D. C., December 23, 1920.

"MY DEAR MR. SECRETARY:

"Subsequent to the severance of diplomatic relations between the Turkish Government and the United States, His Majesty's Government at Madrid officially instructed me to assume charge of Turkish Governmental interests in the United States, in which capacity I have had the honor to communicate and treat with this Department continuously.

"I now have the honor to inform you that the steamship "GUL DJEMAL", which is owned, manned and operated by the Turkish Government, has been seized under process issued out of the United States District Court for the Southern District of New York.

"I have received cabled instruction from His Majesty's Government at Madrid, acting at the instance of the Turkish Government at Constantinople, to do everything possible in my official capacity as the Representative of the Turkish Government in the United States, to obtain the vessel's release because she is owned, manned and operated by the Turkish Government.

"The Department would, therefore, honor me by advising that it recognizes the fact that I am officially in charge of the Turkish Governmental interests in the United States during the suspension of diplomatic relations between the two Governments; that no declaration of war has been made by either Government as against the other, and that the treaties between the two nations are still in force.

"Believe me,
"My dear MR. DAVIS,
"Very sincerely yours,"
(signed) JUAN RIANO

DEPARTMENT OF STATE

WASHINGTON

WASHINGTON, D. C. December 24 1920.

"MY DEAR MR. AMBASSADOR:—

"I beg to acknowledge receipt of your note of December 23, 1920, in which you state that the steamship *Gul Djemal* which is owned, manned and operated by the Turkish Government has been seized under process issued out of the United States District Court for the Southern District of New York and that you have been instructed by his Majesty's Government at Madrid acting at the instance of the Ottoman Government to do everything possible to obtain the release of the vessel mentioned. It is understood that you desire a statement that the Department recognizes that you are "officially in charge of the Turkish governmental interests in the United States during the suspension of the diplomatic relations between the two governments; that no declaration of war has been made by either government as against the other, and that the treaty between the two countries are still in force."

"Inasmuch as you have for a considerable period been Ambassador recognized by the Department as representing Turkish interests in the United States the Department will of course be glad to give consideration to any representation which you desire to make to this government on behalf of the Ottoman government in relation to the detention of the steamship *Gul Djemal*. Although the diplomatic relations between the government of the United States and the government of Turkey were severed on the initiative of the Turkish government no declaration of war has as you doubtless are aware been made by either government against the other. With respect to the status of the treaties between the United States and Turkey, I beg to say that in view of the interruption

of relations between the two countries the Departments prefers to refrain at this time from discussing the status of these treaties.

"I am, my dear MR. RIANO,
"Very sincerely yours,"
(signed) NORMAN H. DAVIS

"To SENOR DON JUAN RIANO,
"Ambassador of His Majesty the King of Spain
at Washington"

These letters were brought to my attention, and formed the basis of a rehearing of the original motion. I have given the letters and the arguments made thereon careful consideration and have concluded that I should adhere to my original decision. In saying this I wish it understood that this Court is anxious, within the limits of what it conceives to be its power and discretion, to accord to the Spanish Ambassador and to the Ottoman Government every courtesy, right, privilege and immunity to which either may be entitled under the Law of Nations.

The fact, however, remains that diplomatic relations between the United States and Turkey were severed in 1917, and such relations have not been resumed. I realize, of course, that a breach of diplomatic relations does not bring about a cessation of all intercourse between the states concerned. This is amply established by the letters above quoted and by the invariable line of conduct pursued in like instances throughout many years of history. Nevertheless, I cannot divorce my mind from the firm conviction that once diplomatic relations are severed, the intercourse thereafter to be carried on between the states should, so far as this government is concerned, be exclusively confined to that department which under our form of government is charged with the management of foreign affairs. My investigations of international law lead to the conclusion that a severance of diplomatic re-

lations is a non-amicable measure, and there is a possibility that at any time one government or the other may engage in various methods of retorsion or retaliation without a state of war resulting therefrom. For example, a pacific blockade or an embargo may be declared, and possibly other action taken that is in its essence political rather than legal. If, in a given case, it were the desire of this Government to take advantage of any such measure, this Court would not be informed of the fact, and in so far as the Court attempted to deal with property which might be the subject matter of executive action, it would run the risk of completely frustrating the same. It is doubtless true, as is represented to me, that there exists between Turkey and the United States, notwithstanding the severance of diplomatic relations, a considerable degree of cordiality. Indeed, so far as I am informed, there is no reason why, from a governmental standpoint, the *Gul Djemal* should not be declared immune from process. This view, however, so far as it affects this Court, is a matter of belief that falls short of knowledge. If the amity existing between the two states is such that this Government wishes the vessel released, I will gladly release her upon a suggestion that emanates from the Department of State.

The adoption of a suggestion short of one originating in such Department carries with it, I think (at least under circumstaces differing from those now present) the possibility not only of confusion between co-ordinate branches of this Government, but also the likelihood of embarrassment.

If, in cases where diplomatic relations have been severed, such matters are left to the exclusive management of the Executive, all such danger will be avoided.

The views I entertain upon the subject would seem to have some support in the statutory law of the United States. Section 202 of the Revised Statutes reads:—

> "The Secretary of State shall perform such duties as shall from time to time be enjoined on or intrusted to him by the President relative to correspondences, commissions, or instruction to or with public ministers or consuls from the United States, or to negotiations with public ministers from foreign states or princes, or to memorials or other applications from foreign public ministers or other foreigners, or to such other matters respecting foreign affairs as the President of the United States shall assign to the Department, and he shall conduct the business of the Department in such manner as the President shall direct."

This statute to my mind indicates that the action I am asked to take here, in the absence of a suggestion from the State Department, is not within the purview of my authority. Indeed, the letter of the Acting Secretary of State above quoted shows that that Department will gladly consider any representations that the Spanish Ambassador wishes to make with reference to the *Gul Djemal*. I quote:—

> "Inasmuch as you have for a considerable period been Ambassador recognized by the Department as representing Turkish interests in the United States the Department will of course be glad to give consideration to any representation which you desire to make to this government on behalf of the Ottoman government in relation to the detention of the steamship 'Gul Djemal.'"

The question being one pre-eminentlly, and I think exclusively, within the province of the State Department, I accordingly decline to release the ship save upon a suggestion that emanates from that Department.

January 3, 1921.

JNO. C. KNOX,
U. S. District Judge.

(SEAL)

SCHEDULE "R".

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

MOUNT ROYAL STEAMSHIP COMPANY, LTD.,
Libellant,

against

S. S. "GUL DJEMAL", her engines, boilers, etc.
AND FOUR OTHER CAUSES.

Sirs:

PLEASE TAKE NOTICE that annexed is a copy of an order, the original of which will be presented to the Clerk of this Court for settlement and signature on the 10th day of January 1921, at 10 a. m.

Yours, &c.,
HARRINGTON, BIGHAM & ENGLAR,
Proctors for Libellant,
64 Wall Street,
New York City.

To:
MESSRS. PURRINGTON & MCCONNELL,
Proctors for Claimant,
52 Wall Street,
New York City.

At a Stated Term of the District Court of the United States, held in and for the Southern District of New York, at the United States Court House and Post Office Building, in the Borough of Manhattan, City of New York, on the 10th day of January, 1921.

Present:
Honorable JOHN C. KNOX,
United States District Judge.

MOUNT ROYAL STEAMSHIP COMPANY, LTD.,
Libellant,

against

S. S. "GUL DJEMAL", her engines, boilers, etc.
AND FOUR OTHER CAUSES.

It appearing that a libel was filed herein on the 2nd day of December, 1920, praying that process issue against the S. S. *Gul Djemal,* her engines, boilers, etc., and said process having issued to the Marshal for the Southern District of New York, and the said Marshal having arrested said Steamship, and Purrington & McConnell, appearing specially on behalf of the S. S. *Gul Djemal,* the Turkish Government, and the Administration Seire-Seffain for the purpose of objecting to the jurisdiction of the court and submitting the suggestion of His Excel-

lency, the Ambassador of His Majesty, the King of Spain, at Washington, in charge of Turkish interests, having moved this Court for an order releasing the *Gul Djemal* from attachment and declaring the said steamship immune from the process of this Court:

Now, on reading and filing the process, the petition submitted by the Libellant, and the suggestion of the Royal Ambassador of His Excellency, the King of Spain, to the United States, the official status of said Ambassador as the Spanish Ambassador to the United States being authenticated and vised by the Secretary of State of the United States, in which suggestion it is stated that the said Steamship *Gul Djemal* at all the times mentioned in the libel was and now is owned by the Government of Turkey and in the possession of the Government of Turkey, and after hearing William A. Purrington, Esq., of Purrington & McConnell, Proctors appearing specially as aforesaid, in support of said motion, and Harold V. Amberg, Esq., of Harrington, Bigham & Englar, Proctors for the Libellant, in opposition thereto, and having ruled on December 22, 1920, that this Court, in view of the severance of diplomatic relations between the Government of Turkey and the United States of America and the international relations involved thereby, is in no position to adopt as conclusive on this Court the suggestion of the Spanish Ambassador herein, and having respectfully referred the Spanish Ambassador to the Department of State of the United States, and

At a rehearing granted December 29th, 1920, and held December 30th, 1920, on reading and filing certain letters, which have since the ruling of December 22nd, 1920, passed between the Spanish Ambassador and the Department of State of the United States, and having heard William A. Purrington, Esq., of Purrington & McConnell, in support of said motion and George S. Brengle, Esq., of Harrington, Bigham & Englar in opposition

thereto, and having ruled on January 3rd, 1921, that, under the circumstances, the question is within the province of the State Department and that any suggestion of immunity of the S. S. *Gul Djemal* should come to this Court from the State Department, it is

ORDERED that the motion that the S. S. *Gul Djemal* be released from arrest be and the same is hereby denied, and that the denial of the original motion herein, on December 22nd, 1920, is in all respects affirmed.

FURTHER ORDERED, that, as petition is about to be presented by the master of the *Gul Djemal*, specially appearing, to the United States Supreme Court at Washington for a Writ of Prohibition and/or Mandamus; let all proceedings be stayed against the steamship *Gul Djemal*, her owner, master, etc., until the hearing and determination upon the said writ or writs by the United States Supreme Court and the receipt by the District Court of a mandate thereon.

JNO. C. KNOX,
U. S. D. J.

(Stamp Endorsement)
U. S. District Court.
Filed Jan 11, 1921
S. D. of N. Y.

Supreme Court of the United States

IN THE MATTER

OF

The Petition of HUSSEIN LUTFI BEY, Master of the Turkish Government steamship "GUL DJEMAL", for Writs of Prohibition and/or Mandamus

against

HON. JOHN C. KNOX, United States District Judge for the Southern District of New York, and the other Judges and officers of the said United States District Court for the Southern District of New York.

SUGGESTION OF SPANISH AMBASSADOR ON BEHALF OF THE TURKISH OR OTTOMAN GOVERNMENT AND MOTION FOR LEAVE TO FILE

FRANK J. McCONNELL,
Counsel for SPANISH AMBASSADOR,
Amicus Curiae,
No. 52 Wall Street,
New York City,
New York.

B. H. TYRREL, PRINTER, 206-8 FULTON STREET, NEW YORK.

SUPREME COURT OF THE UNITED STATES.

IN THE MATTER *of* The Petition of HUSSEIN LUTFI BEY, master of the Turkish Government steamship "GUL DJEMAL", for Writs of Prohibition and Mandamus, *against* HONORABLE JOHN C. KNOX, United States District Judge for the Southern District of New York, and the other judges and officers of the said United States District Court for the Southern District of New York.	Motion for leave to intervene as *Amicus Curiae*.

Now comes Frank J. McConnell, counsel for the Spanish Ambassador in the United States of America, representing the Turkish Government's interests in the United States of America, and prays leave of Court to intervene in the above entitled cause as *amicus curiae*, and as such *amicus curiae* to present to the Court the accompanying suggestion of the immunity from judicial process in our courts of the Turkish Government steamship *Gul Djemal*, and upon the hearing of this cause to submit a brief in

support of said Suggestion and take part in the oral argument of the cause.

Dated, January 14, 1921.

FRANK J. MCCONNELL,
Counsel for Spanish Ambassador,
Acting on behalf of the Turkish Government,
Amicus Curiae,
52 Wall Street,
New York City.

SUPREME COURT OF THE UNITED STATES.

In the Matter

of

The Petition of Hussein Lutfi Bey, master of the Turkish Government steamship "Gul Djemal", for Writs of Prohibition and Mandamus,

against

Honorable John C. Knox, United States District Judge for the Southern District of New York, and others.

Suggestion of Counsel for Spanish Ambassador, on Behalf of the Turkish Government.

Now comes Frank J. McConnell, counsel for the Spanish Ambassador in the United States of America, intervening as *amicus curiae*, and submits the accompanying suggestion with the annexes thereto, of the Spanish Ambassador on behalf of, and representing the Turkish Government, and suggests and represents to this Honorable Court:

I—That the Turkish Government is a sovereign nation at peace with the United States of America. During the late war between the Entente Nations and

3

the Central Powers, diplomatic relations between the United States and Turkey were suspended on April 20, 1917, without, however, any declaration of war between the two countries, and the Ambassador of His Majesty, the King of Spain at Washington, upon the request of the Turkish or Ottoman Government to His Majesty, the King of Spain, and with the consent of the United States Government took charge and still has charge in the United States of the interests of the Turkish Government and of its subjects.

II—The said steamship *Gul Djemal*, now at the port of New York, is owned and is in the possession of the said government of Turkey, in the person of a master employed and paid by said government, and is wholly under the control and management of the said Government, and manned and operated by officers and crew employed and paid by the said Turkish or Ottoman Government.

Her navigating officer is a duly commissioned lieutenant of the Turkish Navy, specially assigned to said vessel by the Turkish Ministry of Marine.

III—At the time of the arrival of the *Gul Djemal* at New York on or about October 31st, 1920, she was under a short time charter for a single voyage, expiring in forty-five (45) days from its inception on October 6th, 1920.

This charter had been made by the Turkish Government with the charterer through the Administration Seire Seffain which is the name of a steamship line which is in effect the Department of Navigation of the Turkish Government and an integral part of the said Government.

The charter party in question was not a charter of demise and the possession of the steamship *Gul Djemal* remained throughout the said charter in the possession

of the Turkish Government through a master employed and paid by it as shown in Schedule C annexed to the petition for a writ of prohibition and/or mandamus.

IV—That the said Spanish Ambassador has received cable instructions from His Majesty's government at Madrid, acting at the instance of the Turkish Government at Constantinople, to do everything in his official capacity as the representative of the Turkish Government in the United States, in order to obtain the release of the steamship *Gul Djemal* from her arrests and attachments because she is in the possession of and owned, manned and operated by the Turkish Government.

V—That said Writs of Arrest against said steamship *Gul Djemal* should have been and should now be quashed and dissolved, and that all proceedings to arrest or detain the said steamship under said Writs, or otherwise, should be stayed so long as said steamship remains in the ownership and possession of the Turkish Government as aforesaid.

VI—That by a certain order made by the Honorable John C. Knox, United States District Judge, dated January 10th, 1921, and referred to in the petition for writ of prohibition in this matter, the exercise of the right of the Turkish Government to direct and control the movements of said steamship *Gul Djemal* owned by it and in its possession was interfered with, and in order to obtain the release of the said vessel from the attachments by the writs as aforesaid, security would have to be given by the Turkish Government.

VII—That such requirement of security defeats and nullifies the immunity from judicial process to which said steamship *Gul Djemal* is entitled as a Turkish Government vessel owned by and in the possession of the

Turkish Government, and is an attempt to exercise jurisdiction over a vessel owned by, in the possession of and public service of the Turkish or Ottoman Government, over which the courts of the United States have not and should not take jurisdiction according to well settled principles and usages of international law from which the United States have never stated by executive or legislative pronouncement that it intends to depart, nor before this case, has there been any case as I am advised where a vessel owned by and in possession of a friendly foreign Sovereign has not been held immune from process.

VIII—That the interruption and delay of the voyage of said vessel caused by such arrest and detention wrongfully interfere with the Turkish Government's possession and control of said vessel, and thereby interfere with the efficient conduct of the operations of the Turkish Government.

IX—That in order to prevent such unlawful assumption of jurisdiction over the steamship *Gul Djemal* as a vessel owned by and in possession of the Turkish Government, this Court should grant the prayer of the Petition herein, and issue a Writ of Prohibition directed to said Honorable John C. Knox, United States District Judge, forbidding him to arrest or detain the said steamship *Gul Djemal*, under the writs which have been issued against her, or to exact security as a condition of her release, or a Writ of Mandamus requiring him to release the said steamship and to stay all proceedings to arrest or detain her so long as she remains in the ownership and possession of the Turkish Government, and such other or further Writ or Writs as may be necessary or convenient in the premises, and in the meantime, and until the hearing and determination of this application,

all action or actions against the steamship *Gul Djemal* should be stayed.

Dated, January 14, 1921.

FRANK J. MCCONNELL,
Counsel for Spanish Ambassador,
Acting on behalf of the
Turkish Government,
Amicus Curiae,
52 Wall Street,
New York City.

SUPREME COURT OF THE UNITED STATES.

In the Matter *of* The Petition of Hussein Lutfi Bey, master of the Turkish Government steamship "Gul Djemal", for Writs of Prohibition and/or Mandamus, *against* Honorable John C. Knox, United States District Judge for the Southern District of New York, and the other judges and officers of the said United States District Court for the Southern District of New York.	Suggestion of the Spanish Ambassador on behalf of the Turkish Government.

To the Honorables the Chief Justice and Associate Justices of the United States Supreme Court:

The Ambassador of His Majesty the King of Spain at Washington, by Frank J. McConnell, Counsel, respectfully asks to be allowed as *amicus curiae* to make the following suggestions to the Honorables the Chief Justice and Associate Justices of the United States Supreme Court:

The Turkish Government is a sovereign nation at peace with the United States of America. During the late war between the Entente nations and the Central

Powers, diplomatic relations between the United States and Turkey were suspended without, however, any declaration of war between the two countries, and the Ambassador of His Majesty the King of Spain at Washington, upon request of the Turkish Government to His Majesty the King of Spain, took charge and still has charge in the United States of the interests of the Turkish Government and of its citizens.

At all times mentioned in the libel in each of said actions, the Administration Seire-Seffain was and still is the name of a steamship line owned and managed by and in the possession of the Turkish Government and is an integral part or branch of the said Government; the said steamship *Gul Djemal*, now at the port of New York, is owned, possessed and managed by said Government, is in the possession of the said Government of Turkey, in the person of a Master employed and paid by said Government, and is wholly manned and operated by officers and crew employed and paid by said Government; her navigating officer is a duly commissioned Lieutenant of the Turkish navy, specially assigned to said vessel by the Turkish Ministry of Marine, and the vessel is under a short time charter for a single voyage, expiring in forty-five days from its inception on or about October 6th, 1920.

Annexed hereto is a copy of a letter addressed by the Ambassador to the Acting Secretary of State of the United States under date of December 23rd, 1920, and his reply thereto, dated December 24th, 1920, and of a true paraphrase of the cabled instructions referred to in the letter of the Ambassador of December 23rd, 1920. The reason that a paraphrase only of the cabled instructions is given is that they were sent to the Embassy in secret cipher code of the Spanish Government and a direct translation of the cable would involve a revelation of the cipher code and the necessity of arranging a new code.

WHEREFORE, it is respectfully suggested to the court and prayed that the said steamship be released from any seizure and declared immune from process, and that this Honorable Court decline to take jurisdiction of the above entitled causes.

Done at the Embassy of His Majesty the King of Spain at Washington, D. C., this 13th day of January, 1921.

(signed) JUAN RIANO.

(Seal)

(Annex)

11

EMBAJADA DE ESPANA
WASHINGTON

23-23

WASHINGTON, D. C., December 23, 1920.

MY DEAR MR. SECRETARY:

Subsequent to the severance of diplomatic relations between the Turkish Government and the United States, His Majesty's Government at Madrid officially instructed me to assume charge of Turkish Governmental interests in the United States, in which capacity I have had the honor to communicate and treat with this Department continuously.

I now have the honor to inform you that the steamship "GUL DJEMAL", which is owned, manned and operated by the Turkish Government, has been seized under process issued out of the United States District Court for the Southern District of New York.

I have received cabled instructions from His Majesty's Government at Madrid, acting at the instance of the Turkish Government at Constantinople, to do everything possible in my official capacity as the representative of the Turkish Government in the United States, to obtain the vessel's release because she is owned, manned and operated by the Turkish Government.

The Department would, therefore, honor me by advising that it recognizes the fact that I am officially in charge of the Turkish Governmental interests in the United States during the suspension of diplomatic relations between the two Governments; that no declaration

of war has been made by either Government as against the other, and that the treaties between the two nations are still in force.

Believe me,
My dear Mr. Davis,
Very sincerely yours,
(signed) Juan Riano

The Honorable
Norman H. Davis,
Acting Secretary of State of the United States.

(Annex)

13

DEPARTMENT OF STATE
WASHINGTON

WASHINGTON, D. C., December 24, 1920.

MY DEAR MR. AMBASSADOR:

I beg to acknowledge receipt of your note of December 23, 1920, in which you state that the steamship "GUL DJEMAL" which is owned, manned and operated by the Turkish Government, has been seized under process issued out of the United States District Court for the Southern District of New York and that you have been instructed by His Majesty's Government at Madrid acting at the instance of the Ottoman Government to do everything possible to obtain the release of the vessel mentioned. It is understood that you desire a statement that the Department recognizes that you are "officially in charge of the Turkish governmental interests in the United States during the suspension of the diplomatic relations between the two governments; that no declaration of war has been made by either government as against the other, and that the treaty between the two countries are still in force".

Inasmuch as you have for a considerable period been Ambassador recognized by the Department as representing Turkish interests in the United States the Department will of course be glad to give consideration to any representation which you desire to make to this government on behalf of the Ottoman government in relation to the detention of the steamship "GUL DJEMAL". Although the diplomatic relations between the government of the United States and the government of Turkey were severed on the initiative of the Turkish government no

declaration of war as you doubtless are aware has been made by either government against the other. With respect to the status of the treaties between the United States and Turkey, I beg to say that in view of the interruption of relations between the two countries the Department prefers to refrain at this time from discussing the status of these treaties.

I am, my dear Mr. Riano,

Very sincerely yours,

(signed) NORMAN H. DAVIS

To SEÑOR DON JUAN RIANO,
Ambassador of His Majesty the King of Spain
at Washington.

No.

UNITED STATES OF AMERICA

(Insignia)

Department of State

TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETING:

I Certify That Senor Don Juan Riano whose name is subscribed to the paper hereto annexed, is duly accredited to this Government as Ambassador Extraordinary and Plenipotentiary of the Kingdom of Spain *

IN TESTIMONY WHEREOF I, Bainbridge Colby Secretary of State, have hereunto caused the Seal of the Department of State to be affixed and my name subscribed by the Chief Clerk of the said Department, at the City of Washington, this 13th day of January, 1921.

(Seal)

BAINBRIDGE COLBY
Secretary of State
By BEN G DAVIS
Chief Clerk

* For the contents of the annexed document the Department assumes no responsibility.

PARAPHRASE OF CABLED INSTRUCTIONS RECEIVED BY THE AMBASSADOR OF HIS MAJESTY THE KING OF SPAIN AT WASHINGTON FROM HIS GOVERNMENT AT MADRID RELEVANT TO OBTAINING THE RELEASE OF THE TURKISH GOVERNMENT STEAMSHIP "GUL DJEMAL":

"The Turkish Government at Constantinople has approached this Government through customary diplomatic channels confiding a request through this Government at Madrid, which request is herewith transmitted to you as Spanish Ambassador in charge of Turkish governmental interests in the United States of America, to do everything possible in your official capacity as the representative of the Turkish Government in the United States, to obtain the release of the steamship "Gul Djemal" from seizure by process issued out of the United States District Court, Southern District of New York because she is owned, manned, operated and in the possession of the Turkish Government. The foregoing request is transmitted to you for your instruction and guidance."

Supreme Court of the United States

October Term, 1920

No.

Original

In the Matter

of

The Petition of HUSSEIN LUTFI BEY, Master of the Turkish Government steamship "GUL DJEMAL", for Writ of Prohibition and/or a Writ of Mandamus

against

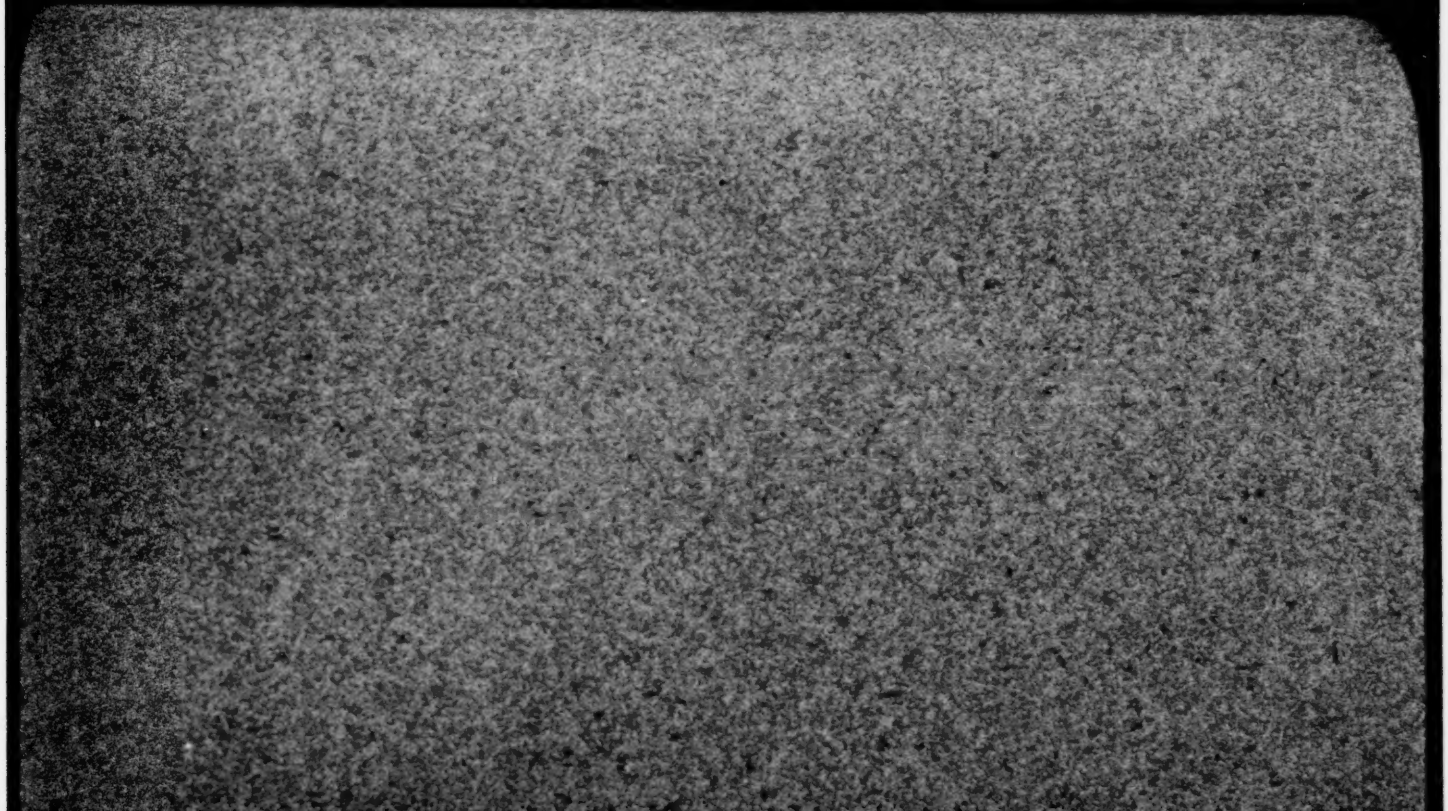
The Hon. JOHN C. KNOX, United States District Judge for the Southern District of New York, and the other Judges and officers of the said United States District Court for the Southern District of New York.

MOTION AND PETITION FOR A WRIT OF PROHIBITION AND/OR FOR A WRIT OF MANDAMUS.

WILLIAM A. PURRINGTON,
Counsel for Petitioner,
25 Wall Street,
New York City.

JOHN M. WOOLSEY,
FRANK J. McCONNELL,
Of Counsel.

S. W. Tunis, Printer, 2016 Tilden Street, New York.



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SUPREME COURT OF THE UNITED STATES.

IN THE MATTER OF The Petition of HUSSEIN LUTFI BEY, Master of the Turkish Government steamship *Gul Djemal*, for a Writ of Prohibition and/or a Writ of Mandamus *against* Hon. John C. Knox, United States District Judge for the Southern District of New York, and the other judges and officers of the said United States District Court for the Southern District of New York.	October Term, 1920. No. —— Original

2

3

MOTION FOR PERMISSION TO FILE PETITION FOR WRIT OF PROHIBITION AND/OR FOR A WRIT OF MANDAMUS.

And now comes the petitioner, Hussein Lutfi Bey, Master of the Turkish Government steamship *Gul Djemal*, now lying at the port of New York, by William A. Purrington, his attorney and counsellor, appearing specially, and moves—

4 1—For leave to file the petition for a writ of prohibition and for a writ of mandamus, hereto annexed, and

2—That a rule be entered and issued, directing the District Court of the United States for the Southern District of New York and the Hon. John C. Knox, a judge thereof, and all the other judges and officers of said court, to show cause why a Writ of Prohibition and/or a Writ of Mandamus should not issue against them, and each of them, in accordance with the prayer of said petition, and why said petitioner should not have such other and further relief in the premises as may be just.

5 WILLIAM A. PURRINGTON,
Counsel for Petitioner.

JOHN M. WOOLSEY,
FRANK J. MCCONNELL,
Of Counsel.

6

7

SUPREME COURT OF THE UNITED STATES.

IN THE MATTER OF The Petition of HUSSEIN LUTFI BEY, Master of the Turkish Government steamship *Gul Djemal*, for a Writ of Prohibition and/or a Writ of Mandamus *against* the Hon. John C. Knox, United States District Judge for the Southern District of New York, and the other judges and officers of the said United States District Court for the Southern District of New York.	October Term, 1920 No. —— Original

8

PETITION FOR WRIT OF PROHIBITION AND/OR A WRIT OF MANDAMUS.

9

TO THE HONORABLES THE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

The petition of Hussein Lutfi Bey, Master of the Turkish Government steamship *Gul Djemal*, against the Hon. John C. Knox, Judge of the United States District Court for the Southern District of New York, sitting in Admiralty, and all of the other judges and officers of

10 said United States District Court for the Southern District of New York, respectfully represents:

FIRST: That this petitioner is, and at all the times hereinafter mentioned, was, the Master of the Turkish Government steamship *Gul Djemal*. The *Gul Djemal* is and at all the times hereinafter mentioned was owned by the Turkish Government and in the possession of this petitioner as agent and representative of the Turkish Government. She is now lying in the port of New York, in readiness to sail. The navigating officer of the *Gul Djemal* is Mahmed Burhaneddin, a duly commissioned officer of the Turkish Navy, specially assigned to duty
11 upon the *Gul Djemal* by the Turkish Admiralty, through the Turkish Ministry of Marine. Your petitioner himself and the officers and crew of the *Gul Djemal* are all employed and paid by the Turkish Government and were all assigned to the *Gul Djemal* by the Turkish Ministry of Marine. A copy of an affidavit of said Burhaneddin is hereto annexed and marked Schedule "A" and hereby made part hereof. The original affidavit was submitted with the previous application made to the Court on January 14, 1921.

SECOND: The *Gul Djemal* is one of a fleet of twenty-
12 two vessels, which, for some time prior to and at the time of the arrests and attachments hereinafter referred to herein, belonged to and were and are a part of the public service of the Turkish Government.

The *Gul Djemal* is and at all times hereinafter mentioned was owned, manned, managed, operated and controlled by and in the possession of the Turkish Ministry of Marine through its department of navigation, known as the Administration Seire-Seffain, which is an integral part of the Government of Turkey.

THIRD: The *Gul Djemal* left Constantinople with passengers and a small amount of cargo on October 6th, 1920, having obtained a permit to make the voyage from the Allied Port Control Officers on the previous day. This Allied Naval Control permit was handed to your petitioner by said Officers in exchange for the register of the ship, and requests all Allied Naval Authorities to give my vessel every possible assistance in order that she may complete her voyage with dispatch. A copy of the original permit, signed by the British, French and Italian Port Captains at Constantinople, is annexed hereto as Schedule "B" and made part hereof. 13

FOURTH: The *Gul Djemal* was chartered by the Turkish Government, through the Administration Seire-Seffain, to one M. George Dede Oglu, a resident of Constantinople, Turkey, for a period of forty-five days, commencing on the 6th of October, 1920. The period of said charter party has now expired. A true translation thereof is annexed hereto and made part hereof, marked Schedule "C." 14

FIFTH: The charterer, M. George Dede Oglu, has failed to pay for various supplies to the vessel pursuant to his agreement as provided in the charter party, thereby breaching the charter party, as a result of which the vessel has been improperly libelled as hereinafter described and delayed from sailing. 15

SIXTH: The *Gul Djemal* has fully complied with all the requirements of the duly constituted authorities, both of the Port of New York and of the United States and is now and has been ready to depart therefrom since November 26, 1920, but cannot do so because she has been wrongfully libelled, and is under arrest at the instance of various supply men, stevedores, charterer's agents, etc., for sums totalling Eighty thousand, five hundred and

16 eighty-five ($80,585.) dollars. Her delay in port is costing the Turkish government a large amount of money daily, due to the loss of the active use of the vessel and due to the expenses of a crew of upwards of two hundred men who are now, and have been, on board her before and since her arrival at New York.

SEVENTH: That on the 2nd day of December, 1920, the Mount Royal Steamship Company, Ltd., filed its libel in the United States District Court for the Southern District of New York in admiralty against the Turkish Government steamship *Gul Djemal*, claiming the sum of Sixty-six thousand, eight hundred and forty-two dollars
17 and forty cents ($66,842.40) by reason of certain alleged advances claimed to have been made for coal, supplies, water and services furnished said vessel and necessary for her maintenance between the 13th and 21st days of October, 1920, at the port of Gibraltar, and between October 31st and November 22nd, 1920, at the port of New York, as will more fully appear from a copy of the libel, hereto annexed, marked Schedule "D" and hereby made a part of this petition.

That, after the filing of said libel, process was issued in ordinary course and the Turkish Government steamship *Gul Djemal* was arrested thereunder on the 2nd day
18 of December, 1920. A true copy of the process is hereto annexed as Schedule "E" and hereby made part hereof.

EIGHTH: That on the 30th day of November, 1920, the Terminal Service Corporation filed its libel in the United States District Court for the Southern District of New York in admiralty against the Turkish Government steamship *Gul Djemal* and the Seire-Seffain Steamship Company, claiming damages in the sum of Nine thousand, one hundred and sixty-four dollars, sixty-three cents ($9,164.63) by reason of certain alleged wharfage,

labor, supplies and other necessaries furnished said vessel, alleged to have been furnished during the period from 3 P. M., November 1st, 1920, to 3 P. M., November 30th, 1920, as will more fully appear from a copy of the libel hereto annexed, marked Schedule "F", and hereby made a part of this petition. 19

That, after the filing of said libel, an order for process was issued and the Turkish Government steamship *Gul Djemal* was, on or about December 1, 1920, arrested thereunder. Process of foreign attachment was also issued as to certain monies, stated to belong to what the libelant calls the Seire-Seffain Steamship Company, but which is really the Administration Seire-Seffain, an integral part of the Turkish Government. Copies of these processes are hereto annexed as Schedules "G" and "H" and hereby made part hereof. 20

NINTH: That on the 8th day of December, 1920, on the representation to the Court by counsel appearing specially in the actions on behalf of the Spanish Ambassador, as representative of the Turkish or Ottoman Government, as shown by the special appearance hereto annexed marked Schedule "H-I" and made part hereof, an order was issued by the Hon. John C. Knox, United States District Judge, upon the application filed by William A. Purrington, Esq., and Frank J. McConnell, Esq., counsel appearing specially on behalf of the Spanish Ambassador and the Turkish or Ottoman Government, for the purpose of claiming immunity, that the libelants show cause why orders in the aforesaid suits and in three other suits against the Turkish Government steamship *Gul Djemal* should not be entered herein vacating the several writs of attachment and of arrest heretofore issued out of the said court in the aforesaid actions against the Turkish Government steamship *Gul Djemal* and releasing said vessel and declaring her and said property and 21

22 monies immune from the process of said court, and dismissing the libels herein against the *Gul Djemal* for want of jurisdiction of the said court over said vessel, on the ground that the steamship was a Turkish Government vessel, owned, possessed and managed by said government, presently in the possession of the said government of Turkey, in the person of a master employed and paid by said government and wholly manned and operated by officers, engineers and a crew employed and paid by said government, as will more fully appear from the copies of the order to show cause and the suggestion hereto annexed, marked Schedules "I" and "J", and
23 hereby made a part of this petition.

TENTH: That, thereafter, a hearing was had on or about the 18th day of December, 1920, before Judge Knox and a blanket petition of traverse to the suggestion of the Spanish Ambassador by the Mount Royal Steamship Company, Ltd., duly verified by Onnik Nevrouz, as Treasurer, was presented on behalf of the Mount Royal Steamship Company, Ltd., for itself and its co-libellants; a copy of which is hereto annexed, marked Schedule "K", and hereby made a part hereof.

The proctors appearing specially on behalf of the Spanish Ambassador and the Turkish Government, also
24 submitted, with the permission of the court, on the 18th day of December, 1920, a letter from the United States' State Department, dated December 16th, 1920, as part of the record. Copy of this letter is hereto annexed as Schedule "L" hereof.

ELEVENTH: That thereafter, and on the 22nd day of December, 1920, the Hon. John C. Knox handed down an opinion in this case, in which it was erroneously and improperly held that the *Gul Djemal* would not be released; that the suggestion of the Spanish Ambassador could not

be received on behalf of the Turkish Government, and 25
that the Spanish Ambassador, in his capacity as representative of the Turkish Government, must be relegated to the Department of State for such relief as he could there obtain. Copy of the opinion is hereto annexed, marked Schedule "M" hereof.

TWELFTH: Thereafter, and on the 23rd day of December, 1920, the Spanish Ambassador addressed and caused to be delivered to the Department of State, a letter dated December 23rd, 1920, a true copy of which is hereto annexed marked Schedule "N" and hereby made part hereof.

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THIRTEENTH: Thereafter, and on the 24th day of December, 1920, the Spanish Ambassador received from the Department of State, a letter dated December 24th, 1920, a true copy of which is hereto annexed and hereby made part hereof as Schedule "O."

FOURTEENTH: On the said letters and an affidavit of Frank J. McConnell, verified December 27, 1920, a rehearing was granted and a further order was issued by the Hon. John C. Knox, United States District Judge, that the libellants show cause why said writs of arrest and attachment in the aforesaid actions and three other actions against the Turkish Government steamship *Gul Djemal* 27
should not be vacated and the Turkish Government steamship *Gul Djemal* released and declared immune from process of the said court, and the libels herein dismissed for want of jurisdiction of the said court, said order being based, as before, on the ground that the steamship was a Turkish Government vessel, owned, possessed and managed by said government, in the possession of the said Government of Turkey, in the person of a master employed and paid by said government and wholly manned and operated by officers and crew em-

28 ployed and paid by said government, and that the official status of the Spanish Ambassador was established, as the representative of the Turkish Government by the correspondence between him and the State Department, above mentioned, as will more fully appear from the copy of the order to show cause, affidavit and letters above referred to and annexed to said order to show cause, marked Schedule "P," and hereby made a part hereof.

FIFTEENTH: That thereafter a rehearing was had and on the 3rd day of January, 1921, Judge Knox handed down an opinion in which it was wrongfully and improperly held that the *Gul Djemal* would not be released.
29 Copy thereof is hereto annexed, marked Schedule "Q", etc.

Thereafter an order was made and entered in accordance with the opinion, a copy of this order is hereto annexed, marked Schedule "R".

SIXTEENTH: Thereafter on January 14, 1921, your petitioner presented to this Court a motion and petition for a writ of prohibition and/or for a writ of mandamus to the Honorable John C. Knox, United States District Judge for the Southern District of New York, and the other Judges and officers of the said United States District Court for the Southern District of New York, and
30 annexed to the said motion and petition the schedules hereinabove referred to.

At the same time the Spanish Ambassador filed a petition for leave to intervene as *amicus curiae* and filed a suggestion with the Court.

SEVENTEENTH: On January 17, 1921, this Court announced that it denied the motion for leave to file a petition for writs of prohibition and/or for mandamus and denied the motion of the Spanish Ambassador to intervene.

EIGHTEENTH: At the same time this Court handed 31
down an opinion in the case of *In re Muir, as master of the steamship Gleneden*, in which it outlined the procedure which should be followed for the establishment of immunity and disapproved of intervention by Ambassadors under the guise of *amicus curiae*.

NINETEENTH: Thereafter, owing to the said decision in *In re Muir*, a motion was made in the District Court for leave to file a special claim and plea in abatement by your petitioner and an exception to the writ and for a stay of proceedings, and Judge Knox granted the motion and made an order dated January 26, 1921, a true copy of which is hereto annexed marked Schedule "S." 32

TWENTIETH: At the same time and in pursuance to the leave so given, your petitioner filed a special claim, exception to the writ and a special plea in abatement, a true copy of which is hereto annexed marked Schedule "T."

TWENTY-FIRST: Thereafter the libelant filed an exception to the special claim and plea in abatement. A true copy of which exception is hereto annexed marked Schedule "U."

TWENTY-SECOND: Thereafter, on behalf of your petitioner as special claimant, a formal motion for the release of the vessel was made. A true copy of this motion is hereto annexed marked Schedule "V." 33

TWENTY-THIRD: Thereafter the said motion for release of the steamship *Gul Djemal* came on for argument before Honorable John C. Knox, on February 10, 1921, and after hearing argument in support of the motion and in opposition thereto, the Court denied the motion and held that it would not release the steamship *Gul Djemal*,

34 adhering to its previous rulings embodied in Opinion, Schedules M and Q hereof, and, consequently, sustained the exceptions filed by the libelant to the special claim and plea in abatement.

The order on the motion to release the vessel was made and entered on February 17, 1921, and a true copy thereof is hereto annexed marked Schedule "W."

TWENTY-FOURTH: As your petitioner is informed and believes, the Spanish Ambassador to the United States, representing Turkish interests in the United States, endeavoring to secure the assistance from the State Department which this Court had intimated in *In re Muir* was
35 appropriate in matters of this kind, had delivered to the State Department a letter, dated January 25, 1921, a true copy of which is hereto annexed marked Schedule "X."

TWENTY-FIFTH: Thereafter and on February 14, 1921, as your petitioner is informed, the Acting Secretary of State at Washington, sent a letter to the Spanish Ambassador, a true copy of which is hereto annexed marked Schedule "Y."

TWENTY-SIXTH: Your petitioner is advised by his counsel and believes that by reason of the said correspondence between the Spanish Ambassador and the
36 State Department, it is shown that the proceedings suggested by this Court in the case of *In re Muir*, as master of the *Gleneden*, namely, by intervention through the Secretary of State, cannot be secured in the present case and that this attitude of the State Department is based not on the fact that diplomatic relations have been broken off with Turkey but on the fact that the Department has made it a practice to refrain from taking any action which might constitute an interference by the authorities of this Government with private litigation, even though this

litigation may in some way involve merchant vessels owned by a foreign government. 37

Your petitioner is further informed that, as the matter is now presented to this Court, it involves a pure question of law, as to whether or not Judge Knox was correct in sustaining the libelant's exception to the special claim and plea in abatement, filed by your petitioner, on the ground that diplomatic relations had been severed with Turkey before the libel was filed and had not yet been resumed.

Your petitioner is further informed that this question has never been decided by this or any other Court.

TWENTY-SEVENTH: *The Gul Djemal* is now lying, ready to sail, at Pier 45, North River, New York City, under arrest and attachment by the libellants mentioned and others. Your petitioner cannot file a bond or arrange to have the vessel released from process, without waiving her right to immunity as a vessel owned by the Turkish Government. It is important, therefore, that, if this Court will grant the rule hereby sought, a speedy hearing on said rule may be had in order that the status of the said vessel may be promptly and authoritatively determined by this court. 38

TWENTY-EIGHTH: True copies of all the papers filed in the United States District Court and of all correspondence with the State Department relevant to this application are hereto annexed. 39

TWENTY-NINTH: As your petitioner is informed and believes, the Turkish Government steamship *Gul Djemal*, by reason of being owned by and in the possession of the Turkish Government, with which our Government is and always has been at peace, is now and at the time of service of said writs was wholly immune from, and is, and

was, not subject to the process of the court in any form, by reason of the facts stated in the special claim and plea in abatement hereto annexed as *Schedule T*.

WHEREFORE, your petitioner prays:

1—That a Writ of Prohibition may issue against the said Hon. John C. Knox, Judge of the United States District Court for the Southern District of New York, and/or the other Judges and officers of said court, prohibiting him and them from proceeding with the causes aforesaid and from exacting security as a condition of the release of the steamship *Gul Djemal*, or otherwise interfering in any manner with her, or with any monies or other property of the Turkish Government, on the ground that the Turkish Government steamship *Gul Djemal* and all monies and property of said Government is, and was, immune from process of the District Court.

2—That a Writ of Mandamus may issue out of and from this court against the said Hon. John C. Knox, Judge of the United States District Court for the Southern District of New York, and/or the other Judges and officers of said Court commanding them to vacate the order made and entered by him on the 17th day of February, 1921, and all other orders refusing release of the *Gul Djemal*, and to enter an order forthwith releasing the Turkish government steamship *Gul Djemal* and any monies or other property of the Turkish Government without requiring any security as a condition precedent of said release, and staying all proceedings to arrest or detain the said Turkish government steamship *Gul Djemal* and any monies or other property of the Turkish Government under the said writs, or otherwise, in the said court, so long as the said Turkish government steamship *Gul Djemal* remains in the service of the Turkish or

Ottoman government or said monies or other property remain in the ownership of said Turkish Government. 43

3—That this court issue an order to the District Court for the Southern District of New York staying all proceedings under the libels herein mentioned and all other libels now pending or which may be hereafter filed against the steamship *Gul Djemal*, said stay to remain in force until this court shall have heard and decided this application for a Writ of Prohibition and/or Mandamus and its mandate therein shall have been issued to the said District Court.

4—That an appropriate rule be issued herein by this Court. 44

5—That the court grant to the petitioner such other or further relief as may be just in the premises.

HUSSEIN LUTFI BEY,
Petitioner.

Sworn to before me this
26th day of February, 1921.
JAMES D. BROWN,
Notary Public, New York County,
County Clerk's No. 623, Register's No. 1651. 45
(Seal)

WILLIAM A. PURRINGTON,
Counsel for Petitioner.

JOHN M. WOOLSEY,
FRANK J. McCONNELL,
of Counsel.

46

SCHEDULE "A".

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

MOUNT ROYAL STEAMSHIP COMPANY, LTD., Vacuum Oil Company, Union Stevedoring Corporation, D. T. Magowan, and Terminal Service Corporation,
47 Libellants,

against

S. S. "GUL DJEMAL", etc.

STATE OF NEW YORK
City of New York } ss.:
County of New York

MAHMED BURHANEDDIN, being duly sworn, deposes and
48 says:

I am a subject of the Turkish or Ottoman Empire, residing at the City of Constantinople, Turkey, and am the Navigating Officer of the Turkish steamship *Gul Djemal* now lying at Pier 45, North River, City of New York.

I am a Lieutenant in the Turkish Navy, duly commissioned as such. I was formerly in command of a Turkish torpedo boat destroyer under the Turkish Admiralty and assigned by the Admiralty, through the Turkish Ministry of Marine, to act as Navigating Officer of the steamship

Gul Djemal, which vessel is owned, operated, controlled and in the possession of the Turkish or Ottoman Government in the person of her Master; all the officers and crew upon the said vessel being employed and paid by the said Turkish Government, through its department of navigation, known as the Administration Seire-Seffain. 49

MAHMED BURHANEDDIN.

Sworn to before me this
10th day of December, 1920.
JAMES D. BROWN,
Notary Public,
New York County.
County Clerk's No. 623. 50
Register's No. 1651.
(Seal)

51

52

SCHEDULE "B".

Allied Port Control Offices,
Constantinople,
5th October, 1920.

To The Master of
Turkish S/S "GUL DJEMAL".

Being in all respects ready for sea you are to leave Constantinople at 6 p m, 6th October 1920, and proceed direct to New York in accordance with directions given you at Port Convoy Office.

53

TO ALL ALLIED NAVAL PATROL OFFICERS
AND ALL OTHER PERSONS INTERESTED.

Turkish S/S "GUL DJEMAL" has permission to sail from CONSTANTINOPLE to NEW YORK and return, with cargo and passengers.

All Allied Naval Authorities are requested to give every possible assistance to this vessel in order that she may complete her voyage with despatch.

A TOUS LES OFFICIERS DE PATROUILLE DES MARINES ALLIEES
ET A TOUTES PERSONNES INTERESSEES.

Le navaire ottoman "GUL DJEMAL" est autorisé à se
54 rendre de Constantinople à New York et retour, pour transporter cargaison et passangers.

Priere à toutes personnes des Marines Alliées de bien vouloir acorder aide et projection à ce navaire afin de lui permettre d'effectuer son voyage.

F. L. FIORE,
Italian Captain of the Port.

S. LARME,
French Captain of the Port.

GEO. T. ELLIS, Cap R N
British Captain of the Port.

SCHEDULE "C".

TRANSLATION

S. S. "GUL DJEMAL"

CHARTER PARTY

It is this day mutually agreed between H. HUSSEIN BEY, the Managing Director of Administration Seire-Seffain of Constantinople, the Owner of s. s. "GUL DJEMAL" of (5071) tons gross, on the one part, and M. GEORGE DEDE OGLU, resident at Arabian Han No 133 hereafter called the Charterer, on the other part, for a voyage from Constantinople to New York and return, as follows:—

Art. 1—The Owners agree to let and the Charterer agrees to hire the s. s. "GUL DJEMAL" for a voyage from Constantinople to New York and return.

Art. 2—S. S. "GUL DJEMAL" shall be insured against all risks for a sum of (300,000) Three Hundred Thousand Pounds Turkish in the name of Administration Seire-Seffain for a voyage to New York and return. All insurance expenses shall be paid by the Charterer. The Seire-Seffain will not sail the ship unless an Insurance Policy is obtained by the Charterer, who will be responsible for all expenses and losses which may arise in respect of the above delay.

Art. 3—M. George Dede Oglu agrees to hire on (Time charter) the s. s. "GUL DJEMAL" for a sum of (50000) Fifty thousand Pounds Turkish per month. All expenses as coal, water, oil, and other materials necessary for the sailing of the above ship—except the payment of

the crew of s. s. "Gul Djemal" shall be borne by him—M. Dede Oglu—thirty days being considered one month.

Art. 4—The Time of the Charter Party is a month and half, and begins from the date of the delivery of s. s. "Gul Djemal" to M. Dede Oglu, the Charterer who will use the above ship for the purpose of transport of passengers and cargo from Constantinople to New York and return.

Art. 5—The Charterer, M. Dede Oglu, undertakes to pay the agreed sum (1667) Sixteen hundred and sixty-seven Pounds Turkish per day in case he will not be able to redeliver the ship to the Owners at Constantinople after the elapse of forty-five days.

If the steamer arrives back before the elapse of forty-five days, Seire-Seffain agrees to return the said sum per day. It is hereby agreed that s. s. "Gul Djemal" shall be redelivered to the Owners, in the same perfect condition as when received, on her arrival at Constantinople. If not a demurrage of 500£t Five hundred Pounds Turkish per day shall be paid by the Charterer. The Owners have the right to detain the cargo loaded on board of s. s. "Gul Djemal", in case the Charterer is not able to pay indemnities of demurrage, and the hire of the surplus days of the Charter Party.

Art. 6—The Owners undertake to deliver the ship to the Charterer on the 5th Oct., 1920, except in case of force majeur. The payment of hire begins from the day after the delivery of the above ship. The Charterer, M. Dede Oglu agrees to pay in full, in cash the sum of (75000) Seventy five Thousand Pounds Turkish to the Owners at Constantinople on 25th Sept., 1920, as the payment of hire of one month and half.

Art. 7—M. George Dede Oglu undertakes to pay the sum of (5000 £t) Five Thousand Pounds Turkish as a guarantee to the Owners within 24 hours after the signing of this charter party. It is mutually agreed that the Owners will consider themselves free to record the said sum of guarantee as an income to their Company in case the Charterer will not be able to pay in full the payment of hire on the 25th Sept.-1920. It is also agreed that in case the Allies object to the sailing of the ship after the payment of hire, the Owners will have to return the sum of Guarantee to the Charterer. 61

Art. 8—The permission which will be given by the British Captain of the Port of Constantinople authorizing the sailing of the above ship to America will be accepted as an indisputable document by both parties. 62

Art. 9—S. S. "Gul Djemal" will be examined by the Officials appointed by the British Captain of the Port of Constantinople in presence of Official or Officials of Administration Seire-Seffain and those of M. Dede Oglu.

In case a difference arises in respect of the necessary equipments and accommodation for the sailing of this ship, the decision which will be given by the British Captain of the Port of Constantinople, will be respected by both parties.

63

Art. 10—It is hereby agreed that the Charterer will have to sail s. s. "Gul Djemal" after the elapse of fifteen days of the arrival of the said ship at New York. In case he fails to do so, the Master of the said ship, will provide all the sailing materials and return without being obliged to take any legal proceedings. The Charterer, Dede Oglu, will have no right to claim any losses or indemnities with regard to such like return voyage of the

64 said steamer. It is also agreed that the Charterer will pay the sum of (20,000) twenty thousand Pounds Turkish as a guarantee against the expenses of such like return voyage, in case he fails to respect the rights of this article of this charter party.

Art. 11—The deck and engine officers shall be fed free of charge by the Charterer from the day of their departure from Constantinople to the day of the arrival back. But the food of the crew of the ship shall be supplied by the Owners.

Art. 12—Any difference which may arise in respect
65 of this Charter-Party shall be settled at Constantinople by arbitrators who will appointed by both parties.

Art. 13—This Charter-Party has been exchanged in duplicate on this day of 4th September, 1920.

This charter is made with consent of the Allied Powers on the express conditions that in the event of the coming into execution of Art 258 (1) and (2) of the "conditions of the peace" between the Allied Powers and Turkey the same shall cease and that all claims ipso facto between all parties concerned respecting ship, cargo and freight, shall be referred to, and settled by ar-
66 bitration.

No claim whatsoever in respect of this charter and the consequences thereof shall attach to the Allied Powers or to any officer in the service of the said powers or any of them.

Charter to be signed in the offices of the Allied Captains of the Port and witnessed by British Captain of

the Port and another Allied Captain of the Port, if desirable. 67

Witness
G. E. Eliss
British Captain of the Port
Constantinople.

Owner of the ship.

Director
H. Hussein.

The Charterer
G. Dedeoglu.

Harold Wood
Lieut.

68

Conformemant to the original of the Charter Party.

69

70

SCHEDULE "D".

LIBEL.

To the Honorable the Judges of the United States District Court for the Southern District of New York.

The Libel and Complaint of Mount Royal Steamship Company, Ltd., against The Steamship *Gul Djemal*, her engines, boilers, etc., in a cause of contract, civil and maritime, alleges upon infor-
71 mation and belief and respectfully shows to this Honorable Court as follows:

First: At all the times hereinafter mentioned your libellant was and now is a corporation, organized and existing under and by virtue of the laws of the Dominion of Canada, with an office and principal place of business at Montreal, Canada, and engaged in the business of steamship and forwarding agents.

Second: The steamship *Gul Djemal* now is, or will be during the pendency of process herein, within this district and within the jurisdiction of this Honorable Court.

72

Third: Between the 13th and 21st days of October, 1920, at the port of Gibraltar, your libellant at the special instance and request of the master and owners of said vessel advanced and paid out for the use of said vessel and upon her credit, the sum of Eleven thousand nine hundred fifty-seven pounds, thirteen shillings and two pence (£11,957.13.2) sterling for coal, supplies and services furnished said vessel and necessary for her maintenance between said dates.

FOURTH: At various dates between October 31st, 1920, and November 22, 1920, your libellant, upon the special instance and request of the captain and owners of said vessel and upon her credit, advanced and paid out the sum of Twenty-four thousand nine hundred ninety and 35/100 ($24,990.35) Dollars, at the port of New York for supplies, water and services furnished to said vessel and necessary for her maintenance between said dates. 73

FIFTH: Your libellant has a maritime lien against the said steamship *Gul Djemal* for the said sums of money mentioned in articles "Third" and "Fourth" hereof.

SIXTH: By reason of the premises there became, and still is, due and owing from said vessel to your libellant, the sum of Forty-one thousand eight hundred and fifty-two and 5/100 ($41,852.05) Dollars, the equivalent of Eleven thousand nine hundred fifty-seven pounds, thirteen shillings and 2 pence (£11,957.13.2) sterling, with interest from the 13th day of October, 1920, and the sum of Twenty-four thousand nine hundred ninety and 35/100 ($24,990.35) Dollars, with interest thereon from the said 31st day of October, 1920, no part of which has been paid although duly demanded. 74

SEVENTH: All and singular the premises are true and within the Admiralty and Maritime jurisdiction of the United States and of this Honorable Court. 75

WHEREFORE, libellant prays that process in due form of law, according to the course and practice of this Honorable Court in causes of Admiralty and Maritime jurisdiction issue against the said steamship *Gul Djemal*, her engines, boilers, etc., and that all persons having or claiming any interest therein be cited to appear and answer all and singular the matters aforesaid; that this Honorable Court be pleased to decree to your libellant

76 its damages with interest and costs, and that the said steamship *Gul Djemal*, her engines, boilers, etc., be condemned and sold to satisfy the same, and that your libellant may have such other and further relief as in law and justice it may be entitled to receive.

HARRINGTON, BIGHAM & ENGLAR,
Proctors for Libellant,
Office and Post Office Address,
No. 64 Wall Street,
Borough of Manhattan,
City of New York.

77 STATE OF NEW YORK,
County of New York, } ss.:

ONNIK NEVROUZ, being duly sworn, says:

That he is the Treasurer of the corporation libellant herein and duly authorized to make this verification; that he has read the foregoing libel and knows the contents thereof, and that the same is true of his own knowledge except as to those matters therein stated to be upon information and belief, and that as to those matters he believes it to be true.

That the reason this verification is made by deponent and not by libellant is because libellant is a corporation
78 and deponent is an officer thereof.

ONNIK NEVROUZ.

Sworn to before me this
2d day of December, 1920.
JOSEPH L. O'CONNELL,
Notary Public, Nassau County,
Certificate filed in
New York County Clerk's No. 105,
New York County Register's No. 1186.
Term expires March 30, 1921.
(Seal)

79

SCHEDULE "E".

SOUTHERN DISTRICT OF NEW YORK, ss.:

THE PRESIDENT OF THE UNITED STATES OF AMERICA, To the Marshal of the Southern District of New York, Greeting: Whereas, a Libel hath been filed in the District Court of the United States for the Southern District of New York, on the 2nd day of December in the year of our Lord one thousand nine hundred and twenty by

MOUNT ROYAL STEAMSHIP COMPANY, LTD., 80

against

STEAMSHIP "GUL DJEMAL"

in a cause, civil and maritime, for damages for breach of contract amounting to $66,842.40 for the reasons and causes in the said libel mentioned, and praying the usual process or monition of the said Court in that behalf to be made, and that all persons interested in the said steamship or vessel, her tackle, &c., may be cited in general and special to answer the premises, and all proceedings being had that the said steamship or vessel, her tackle, &c., 81 may for the causes in the said petition mentioned be condemned and sold to pay the demands of the Libellant.

YOU ARE THEREFORE HEREBY COMMANDED to attach the said steamship or vessel, her tackle, &c., and to detain the same in your custody until the further order of the Court respecting the same, and to give due notice to all persons claiming the same, or knowing or having anything to say why the same should not be condemned and sold pursuant to the prayer of the said libel, that they be and appear before the said Court, to be held in and

for the Southern District of New York, on the 13th day of December 1920 at 10.30 o'clock in the forenoon of the same day, if the same shall be a day of jurisdiction, otherwise on the next day of jurisdiction thereafter, then and there to interpose a claim for the same, and to make their allegations in that behalf. And what you shall have done in the premises, do you then and there make return thereof, together with this writ.

WITNESS, the HON. LEARNED HAND, Judge of the said Court, at The City of New York, in the Southern District of New York, this 2nd day of December in the year of our Lord one thousand nine hundred and twenty and of our Independence the one hundred and forty-fifth.

ALEX GILCHRIST, JR.,
Clerk.

HARRINGTON, BIGHAM & ENGLAR,
Proctors for Libellant.

(Endorsed:)

Vol. 75, Page 225. United States District Court Southern Dist. of New York S. S. "Gul Djemal" &c. Monition ret'able Dec. 13, 1920.

SCHEDULE "F".

To the Honorable the Judges of the United States District Court for the Southern District of New York:

The libel of Terminal Service Corporation against the steamship *Gul Djemal*, her engines, tackle and apparel, and against Seire-Seffain Steamship Company in a cause of contract, civil and maritime, alleges as follows:

First: The Terminal Service Corporation at all the times hereinafter mentioned was and still is a New York corporation engaged in the business of furnishing wharfage, labor and supplies to steamships.

Second: The steamship *Gul Djemal*, a Turkish vessel of 5,071 tons gross and 2,991 tons net register is now in the Southern District of New York and within the jurisdiction of this Court.

Third: The respondent, Seire-Seffain Steamship Company, at all the times hereinafter mentioned was and still is a Turkish corporation, engaged in the steamship business, and the owner of said steamship *Gul Djemal*.

Said respondent is not within this District but has goods and chattels within this District, to wit: said steamship *Gul Djemal* now lying at Pier 45 North River in the custody of her master, and certain sums of money in the possession of Cosmos Transport Company, Union Square Hotel Building, 18 Union Square, New York City, and of Mount Royal Steamship Company, Ltd., 17 Battery Place, New York City.

Fourth: During the period from 3 p. m. November , 1920, to 3 p. m. November 30, 1920, the libellant, rely-

88 ing on the credit and security of said vessel, at the special instance and request of said vessel and the agents to whom the management of said vessel at New York was entrusted, furnished said vessel wharfage, labor, supplies and other necessaries of the agreed and reasonable value of $9,164.52.

FIFTH: Said services were maritime and the libellant has a maritime lien on said steamship *Gul Djemal* for said services and for said amount.

SIXTH: There is now due and owing to the libellant from said steamship *Gul Djemal* and her owner the sum
89 of $9,164.52, no part of which has been paid, although duly demanded. Said steamship is still lying at the south side of Pier 45, North River, and, until her removal therefrom, the libellant will continue to furnish wharfage, labor, supplies and other necessaries at an agreed and reasonable rate, and there will become due and owing from said vessel to the libellant a sum of money not ascertainable in addition to said sum of $9,164.52.

SEVENTH: All and singular the premises are true and within the admiralty and maritime jurisdiction of the United States and of this Honorable Court.

90

WHEREFORE, the libellant prays that process may duly issue against said steamship *Gul Djemal*, her engines, tackle and apparel, that all persons claiming any interest therein be cited to appear and answer on oath all and singular the matters aforesaid and that the said steamship may be condemned and sold to pay the demands and claims of the libellant, with interest and costs;

And the libellant further prays that process *in personam* with clause of foreign attachment may duly issue against the respondent, Scire-Seffain Steamship Com-

pany, citing it to appear and answer on oath all and singular the matters aforesaid, and if it cannot be found, then its goods and chattels in this District, to wit: said steamship *Gul Djemal* in the custody of her master at Pier 45, North River, and all respondent's property in the possession of Cosmos Transport Company, Union Square Hotel Building, 18 Union Square, New York City, and of Mount Royal Steamship Company, Ltd., 17 Battery Place, New York City, be attached and seized to the amount sued for; 91

And that this Court will render a decree in favor of the libellant for its damages as aforesaid, with interest and costs and giving the libellant such other and further relief as may be just. 92

BURLINGHAM, VEEDER, MASTEN & FEAREY,
Proctors for Libellant.

93

94

SOUTHERN DISTRICT OF NEW YORK,
City and County of New York, } ss.:

FRED E. T. PEARNE, being duly sworn, says that he is the President of TERMINAL SERVICE CORPORATION, the libellant herein; that he has read the foregoing libel and that the same is true to the best of his knowledge, information and belief; that the sources of his information and the grounds of his belief are documents in his possession. The reason this verification is not made by the libellant is that it is a corporation.

FRED E. T. PEARNE.

95

Sworn to before me, this
30th day of Nov., 1920.
LOTTIE V. JERNIGAN
Notary Public,
New York Co. No. 49
Register's No. 1143
Term expires March 30, 1921

(Endorsed) Let process issue as prayed for.
November 30/20.

J. W. M.
U. S. J.

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97

SCHEDULE "G".

Process in Personam (foreign attachment)

THE PRESIDENT OF THE UNITED STATES OF AMERICA,

To the Marshal of the Southern District of New York, GREETING:

WHEREAS, a libel has been filed in the District Court of the United States of America for the Southern District of New York, on the 30 day of November 1920, by 98

TERMINAL SERVICE CORPORATION
Libellant

against

SEIRE-SEFFAIN STEAMSHIP COMPANY
Respondent

in a certain action civil and maritime for wharfage, supplies etc therein alleged to be due and owing to the said libellant, amounting to $9164.52 dollars, and praying that a citation may issue against the said respondent with clause of foreign attachment, pursuant to the rules and practice of this Court; 99

NOW, THEREFORE, we do hereby command you to cite and amonish the said respondent if he shall be found in your District, to appear before the said District Court at the United States Court Rooms in the United States Court House and Post Office Building, City of New York, on the 13th day of December 1920, at 10.30 o'clock in the forenoon, then and there to answer the said libel, and to

100 make its allegations in that behalf; and if the said respondent cannot be found, that you attach its goods and chattels to the amount sued for; and if such property cannot be found, that you attach its credits and effects to the amount sued for, in the hands of Cosmos Transport Company, Union Square Hotel Building 18 Union Square, New York, N. Y. and of Mount Royal Steamship Company Ltd 17 Battery Place New York, N. Y. Garnishee to wit: moneys & Steamship *"Gul-Dejmal"* and that you cite and admonish the said Garnishee to appear before the said District Court at the time and place aforesaid, and answer on oath as to the said debits, credits or effects of the said respondent in their hands, and to such
101 interrogatories touching the same as may be propounded by libellant; and have you then and there this writ with your return thereon.

WITNESS, the HON. LEARNED HAND, Judge of said Court, this 30th day of November, in the year of our Lord one thousand nine hundred twenty and of our Independence the one hundred and forty-fifth

ALEX GILCHRIST JR
Clerk.

BURLINGHAM VEEDER MASTEN & FEAREY
102 Proctors for Libellant

(Endorsed:)

Vol. 75 Page 215 United States District Court, Southern District of New York S. S. Gul Djemal Process in Personam, with Clause of Foreign Attachment Per Curiam. Returnable Dec. 13 1920

I hereby certify that after due and diligent search, I am unable to find Siere-Seffain Steamship Company, re-

spondent, in my District. In obedience to the within 103
process on the 1st day of December, 1920, I attached the credits and effects of said respondent to the amount sued for, to wit: monies in the hands of the Cosmos Transport Company, Union Square Hotel Building, at No. 18 Union Square, New York, garnishee, by exhibiting to C. Rodin as the agent of the Cosmos Transport Company, Union Square Hotel Building at No. 18 Union Square, New York, the within original and at the same time delivering to and leaving with him a copy thereof.

I further certify that in obedience to the within process on December 1st, 1920, I attached the credits and effects of said respondent to the amount sued for to wit: 104
monies in the hands of the Mount Royal Steamship Company, Ltd., garnishee, at No. 17 Battery Place, New York, by exhibiting to L. B. Garfield, as agent for said steamship company, at No. 17 Battery Place, the within original and at the same time delivering to and leaving with him a copy thereof.

I hereby further certify that in obedience to the within process I attached the steamship "Gul Djemal", her engines, etc. at Pier 45, North River, New York City, by exhibiting to Musaga Leeg, Chief Officer of said ship, the within original and at the same time delivering to and leaving with him a copy thereof.

Dated N. Y., December 13th, 1920. 105

THOMAS D. MCCARTHY
United States Marshal
Southern District of New York

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SCHEDULE "H".

SOUTHERN DISTRICT OF NEW YORK, ss.:

THE PRESIDENT OF THE UNITED STATES OF AMERICA, To the Marshal of the Southern District of New York, Greeting: Whereas, a Libel hath been filed in the District Court of the United States for the Southern District of New York, on the 30th day of November in the year of our Lord one thousand nine hundred and twenty by

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TERMINAL SERVICE CORPORATION

against

STEAMSHIP "GUL DJEMAL"

in a cause, civil and maritime, for wharfage, supplies &c amounting to $9164.52 for the reasons and causes in the said libel mentioned, and praying the usual process or monition of the said Court in that behalf to be made, and that all persons interested in the said steamship or vessel, her tackle, &c., may be cited in general and special to answer the premises, and all proceedings being had

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that the said steamship or vessel, her tackle, &c., may for the causes in the said petition mentioned be condemned and sold to pay the defendants of the Libellant.

YOU ARE THEREFORE HEREBY COMMANDED to attach the said steamship or vessel, her tackle, &c., and to detain the same in your custody until the further order of the Court respecting the same, and to give due notice to all persons claiming the same, or knowing or having anything to say why the same should not be condemned and sold pursuant to the prayer of the said libel, that they be and ap-

pear before the said Court, to be held in and for the Southern District of New York, on the 13th day of December 1920 at 10.30 o'clock in the forenoon of the same day, if the same shall be a day of jurisdiction, otherwise on the next day of jurisdiction thereafter, then and there to interpose a claim for the same, and to make their allegations in that behalf. And what you shall have done in the premises, do you then and there make return thereof, together with this writ. 109

WITNESS, the HON LEARNED HAND, Judge of the said Court, at The City of New York, in the Southern District of New York, this 30th day of November in the year of our Lord one thousand nine hundred and twenty and of our Independence the one hundred and forty-fifth. 110

ALEX GILCHRIST, JR.,
Clerk.

BURLINGHAM, VEEDER, MASTEN & FEAREY,
Proctors for Libellant.

(Endorsed:)

Vol 75, Page 215. United States District Court Southern Dist. of New York "Gul Djemal" Monition ret'able Dec. 13, 1920. 111

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SCHEDULE "H-1".

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

MOUNT ROYAL STEAMSHIP COMPANY, LTD., Libellant, *against* S. S. "GUL DJEMAL," her engines, boilers, etc.	75-211
VACUUM OIL COMPANY, Libellant, *against* S. S. "GUL DJEMAL," her engines, boilers, etc.	75-225
UNION STEVEDORING CORPORATION, Libellant, *against* S. S. "GUL DJEMAL," her engines, boilers, etc.	75-226
D. T. MAGOWAN, Libellant, *against* S. S. "GUL DJEMAL," her tackle, apparel, furniture and freight.	75-217
TERMINAL SERVICE CORPORATION, Libellant, *against* S. S. "GUL DJEMAL," her engines, tackle and apparel, and *against* SEIRE-SEFFAIN STEAMSHIP COMPANY.	75-215

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114

SIRS—PLEASE TAKE NOTICE, that we appear specially herein as proctors on behalf of the Turkish steamship

Gul Djemal, the Turkish Government, her owner, and 115
the Administration Seire-Seffain, for the sole purpose of objecting to the jurisdiction and submitting the suggestion of His Excellency the Ambassador of His Majesty the King of Spain at Washington, in charge of Turkish interests, that this Honorable Court decline jurisdiction in these actions.

Dated, December 9th, 1920.

PURRINGTON & MCCONNELL,
Proctors appearing specially for the steamship *Gul Djemal,* the Turkish Government as owner, and Seire-Seffain, 116
No. 52 Wall Street,
New York City.

To:

MESSRS. HARRINGTON, BIGHAM & ENGLAR,
Proctors for Mount Royal Steamship Co., Ltd.,
64 Wall Street, New York City.

BARRY, WAINWRIGHT, THACHER & SYMMERS, Esqs.,
Proctors for Vacuum Oil Company,
59 Wall Street, New York City.

MESSRS. HARDY, STANCLIFFE & WHITAKER, 117
Proctors for Union Stevedoring Corporation,
165 Broadway, New York City.

EDWARD MAXSON, Esq.,
Proctor for D. T. Magowan,
120 Broadway, New York City.

MESSRS. BURLINGHAM, VEEDER, MASTEN & FEAREY,
Proctors for Terminal Service Corporation,
27 William Street, New York City.

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SCHEDULE "I".

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

MOUNT ROYAL STEAMSHIP COMPANY, LTD.,
Libellant,

against

S. S. "GUL DJEMAL," her engines, boilers, etc.

119 VACUUM OIL COMPANY,
Libellant,

against

S. S. "GUL DJEMAL," her engines, boilers, etc.

UNION STEVEDORING CORPORATION,
Libellant,

against

S. S. "GUL DJEMAL," her engines, boilers, etc.

D. T. MAGOWAN,
Libellant,

against

120 S. S. "GUL DJEMAL," her tackle, apparel, furniture and freight.

TERMINAL SERVICE CORPORATION,
Libellant,

against

S. S. "GUL DJEMAL," her engines, tackle and apparel, and

against

SEIRE-SEFFAIN STEAMSHIP COMPANY.

Upon the annexed affidavit of James D. Brown, verified December 9th, 1920, and the suggestion of His Excellency the Royal Ambassador and High Commissioner of the Kingdom of Spain, and the certificate of the Secretary of State of the United States that the said Ambassador is duly accredited to this government, and on motion of Purrington & McConnell, proctors for claimant, sufficient cause appearing, 121

Let the libellants show cause at a Stated Term of this Court for the hearing of motions, to be held in Room No. 235, in the United States Court House and Post Office Building, Borough of Manhattan, City of New York, on the 10th day of December, 1920, at 10 o'clock in the forenoon, or as soon thereafter as counsel can be heard, 122 why an order should not be entered herein vacating the several writs of attachment and of arrest heretofore issued out of this court in the said actions against the Turkish steamship *Gul Djemal* and all other property and monies within the Southern District of New York belonging to the Turkish Government, claimant of the vessel, the Administration Seire-Seffain, or their agents, and releasing said vessel and declaring her and said property and monies immune from the process of this court, and dismissing the libels herein for want of jurisdiction of this court;

Let service of this order on the libellants or their respective proctors on or before December 9th, 1920, be 123 deemed sufficient, and in the meantime and until the hearing and determination of this motion and the entry of an order thereon, let all proceedings on the part of libellants be stayed:

And the Clerk of this court is hereby directed to accept Notices of Special Appearances from proctors for claimant herein without requiring the usual stipulation for costs pursuant to Rule 6 of the Admiralty Rules of this District.

Dated, December 8, 1920.

JOHN C. KNOX,
U. S. D. J.

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UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

MOUNT ROYAL STEAMSHIP COMPANY, LTD.; VACUUM OIL COMPANY; UNION STEVEDORING CORPORATION; D. T. MAGOWAN; and TERMINAL SERVICE CORPORATION

Libellants,

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against

S. S. "GUL DJEMAL", etc.

STATE OF NEW YORK,
City of New York, } ss.:
County of New York,

JAMES D. BROWN, being duly sworn, deposes and says:

I am the Managing Clerk of the firm of Purrington & McConnell, proctors appearing specially for the steamship *Gul Djemal*, her owner, the Turkish Government, and am familiar with the facts in these cases.

126

The steamship *Gul Djemal* in the above entitled five (5) actions is detained pursuant to process issued out of this court.

The owner of the vessel, as the suggestion of the Spanish Embassy hereto annexed shows, is the Government of Turkey, which Government desires that the vessel be released from seizure in order that she may sail back to Turkey as soon as possible.

WHEREFORE, this order to show cause is respectfully requested and prayed for so that the claim of the Turkish Government may be presented as expeditiously as possible, and the vessel immediately released from her attachments. 127

JAMES D. BROWN.

Sworn to before me this)
day of December, 1920. (
ED. E. VINCENT,
Notary Public, Kings No. 4.

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SCHEDULE "J".

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

MOUNT ROYAL STEAMSHIP COMPANY, LTD.,
Libellant,

against

S. S. "GUL DJEMAL," her engines, boilers, etc.

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131 VACUUM OIL COMPANY,
Libellant,

against

S. S. "GUL DJEMAL," her engines, boilers, etc.

UNION STEVEDORING CORPORATION,
Libellant,

against

S. S. "GUL DJEMAL," her engines, boilers, etc.

D. T. MAGOWAN,
Libellant,

against

S. S. "GUL DJEMAL," her tackle, apparel, furni-
132 ture and freight.

TERMINAL SERVICE CORPORATION,
Libellant,

against

S. S. "GUL DJEMAL," her engines, tackle and apparel, and

against

SEIRE-SEFFAIN STEAMSHIP COMPANY.

To the Honorable the Judges of the United States District Court for the Southern District of New York: 133

The Ambassador of His Majesty the King of Spain at Washington, by Messrs. Purrington & McConnell, proctors appearing specially for claimant of the steamship *Gul Djemal* and the respondent in the above entitled actions, in each of which said vessel has been seized under process of the United States District Court for the Southern District of New York, respectfully makes the following suggestions to this Honorable Court:

The Turkish Government is a sovereign nation at peace with the United States of America. During the 134
late war between the Entente nations and the Central Powers, diplomatic relations between the United States and Turkey were suspended without, however, any declaration of war between the two countries, and the Ambassador of His Majesty the King of Spain at Washington, upon request of the Turkish Government to His Majesty the King of Spain, took charge and still has charge in the United States of the interests of the Turkish government and of its citizens.

At all times mentioned in the libel in each of said actions, the Administration Seire-Seffain was and still is the name of a steamship line owned and managed by and in the possession of the Turkish Government and is an 135
integral part or branch of the said Government; the said steamship *Gul Djemal*, now at the port of New York, is owned, possessed and managed by said Government, is in the possession of the said Government of Turkey, in the person of a Master employed and paid by said Government, and is wholly manned and operated by officers and crew employed and paid by said Government; her navigating officer is a duly commissioned Lieutenant of the Turkish navy, specially assigned to said vessel

by the Turkish Ministry of Marine, and the vessel is under a short time charter for a single voyage, expiring in forty-five days from its inception on or about October 6th, 1920.

WHEREFORE, it is respectfully suggested to the court and prayed that the said steamship be released from any seizure and declared immune from process, and that this Honorable Court decline to take jurisdiction of the above entitled causes.

Done at the Embassy of His Majesty the King of Spain at Washington, D. C., this 8th day of December, 1920.

(signed) JUAN RIANO.

(Seal of Spanish Embassy)

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No. 3246

UNITED STATES OF AMERICA

(Insignia)

Department of State

TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETING:

I Certify That Senor Don Juan Riano, whose name is subscribed to the paper hereto annexed, is duly accredited to this Government as Ambassador Extraordinary and Plenipotentiary of the Kingdom of Spain*

140

IN TESTIMONY WHEREOF, I, Bainbridge Colby, Secreteary of State, have hereunto caused the Seal of the Department of State to be affixed and my name subscribed by the Chief Clerk of the said Department, at the City of Washington, this 8th day of December, 1920.

(Seal of Department of State)

BAINBRIDGE COLBY
Secreteary of State
By BEN G. DAVIS
Chief Clerk.

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* For the contents of the annexed document the Department assumes no responsibility.

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SCHEDULE "K".

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

MOUNT ROYAL STEAMSHIP COMPANY, LTD., Libellant, *against* S. S. "GUL DJEMAL", her engines, boilers, etc.	Petition

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Your Petitioner, the libellant herein, by Harrington, Bigham & Englar, its proctors, respectfully represents that the above action was instituted in this Court by your petitioner by the filing of a libel with the Clerk of this Court on December 2, 1920; that, by said action, your petitioner seeks to recover Sixty-six thousand eight hundred forty-two and 30/100 Dollars ($66,842.30), representing funds advanced to the ship, on the credit of the ship, for coal and other supplies.

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Your petitioner further respectfully represents that the S. S. *Gul Djemal* was arrested on December 2, 1920, by the United States Marshal for the Southern District of New York, pursuant to process issued in accordance with the prayer of said petitioner's libel, and is still in the custody of said marshal; that His Excellency, Senor Don Juan Riano, the Royal Ambassador and High Commissioner of the Kingdom of Spain to the United States

of America, filed with this Court on December 8, 1920, 145
a suggestion, through Messrs. Purrington & McConnell, appearing specially for the claimant of the S. S. *Gul Djemal* (the Government of Turkey), which suggestion states the following:

> "The Turkish Government is a sovereign nation at peace with the United States of America. During the late war between the Entente nations and the Central Powers, diplomatic relations between the United States and Turkey were suspended without, however, any declaration of war between the two countries, and the Ambassador of His Majesty, the King of Spain, at Washington, upon request of the Turkish Government to
> His Majesty, the King of Spain, took charge and 146
> still has charge in the United States of the interests of the Turkish Government and of its citizens.
>
> "At all times mentioned in the libel in each of said actions, the Administration Seire-Seffain was and still is the name of a steamship line owned and managed by and in the possession of the Turkish Government and is an integral part or branch of the said Government; the said steamship *Gul Djemal,* now at the port of New York, is owned, possessed and managed by said Government, is in the possession of the said Government of Turkey, in the person of a master employed and paid by said Government, and is wholly manned and operated by officers and crew employed and
> paid by said government; her navigating officer 147
> is a duly commissioned lieutenant of the Turkish Navy, specially assigned to said vessel by the Turkish Ministry of Marine, and the vessel is under a short time charter for a single voyage, expiring in forty-five days from its inception on or about October 6th, 1920."

Your petitioner further respectfully represents that the S. S. *Gul Djemal* was, on the 4th day of September, 1920, chartered by H. Hussein Bey, the Managing Direc tor of Seire-Seffain Steamship Company of Constanti-

148 nople, the owner of the S. S. *Gul Djemal* to M. George Dedeoglu for a voyage from Constantinople to New York and return, a copy of which charter party is annexed hereto and marked "Petitioner's Exhibit 1."

Your petitioner further respectfully represents on information and belief that the United States of America has severed diplomatic relations with the Government of Turkey and that said relations have not been resumed; that the Government of Turkey in respect to its property in this country has no right to invoke the aid of the Courts of the United States of America either directly or through the good offices of the Ambassador of any other nation to the United States of America; and that
149 the said suggestion of the Spanish Ambassador (whose good offices are limited to the protection of Turkish Nationals in this country) is not properly before this Court.

Your petitioner further respectfully represents that the Department of State of the United States of America certified merely that Senor Don Juan Riano is duly accredited to this Government as Ambassador Extraordinary and plenipotentiary of the Kingdom of Spain, and that said certification nowhere certifies the status of said Ambassador in relation to the property of the Turkish Government, and expressly denies responsibility for the contents of the suggestion filed by the Spanish Ambas-
150 sador. Your petitioner, therefore, respectfully suggests to this Court that, inasmuch as the status of the Spanish Ambassador in relation to the Turkish Government is not certified by the Department of State of the United States of America, such suggestion is insufficient.

Your petitioner further respectfully represents, on information and belief, that, in representing the Turkish Government in the present instance, His Excellency, the Ambassador of the Kingdom of Spain to the United States of America, is acting in a personal capacity and not in any official capacity as Ambassador of the King-

dom of Spain to the United States of America, and that 151
there is no impropriety in raising an issue on the facts set forth in the suggestion of the Spanish Ambassador filed herein. Your petitioner, therefore, traverses the allegations contained in said suggestion.

Your petitioner further respectfully represents that, if the Spanish Ambassador appears officially as Ambassador and not in a personal capacity, any indelicacy involved in traversing the suggestion filed by the Spanish Ambassador herein is imposed on your petitioner by virtue of the direct suggestion of said Ambassador to this Court, rather than through a suggestion verified as to fact by the State Department of the United States; 152
that if the latter course were pursued, your petitioner could raise an issue of fact before said Department of State or before this Court, on such suggestion of the Department of State of the United States, without any undue discourtesy to the dignity of a foreign sovereign, but that the direct suggestion of said Spanish Ambassador precludes your petitioner from such action and your petitioner hereby respectfully objects to the admissibility of a direct suggestion by the Spanish Ambassador.

Your petitioner further respectfully represents that the navigating officer, if he is a duly commissioned lieutenant of the Turkish Navy, especially assigned to said 153
vessel by the Turkish Ministry of Marine, is entitled to no official recognition as such in the Courts of this country, and the property of the Turkish Government can borrow no protection by virtue of his official presence.

Your petitioner further respectfully represents, on information and belief, that, although the Turkish Government may be interested in the Seire-Seffain Steamship Company, the Seire-Seffain Steamship Company, a separate legal entity, cannot acquire for its property the sovereign prerogative of immunity from legal process

154 by virtue of the interest of the Turkish Government. Your petitioner respectfully refers to the status of the United States Emergency Fleet Corporation, which, although exercising powers by direct delegation from the President of the United States, based on Congressional legislation, has, in spite of its suggestions of immunity, been held amenable to the process of the American Courts.

Your petitioner further respectfully represents, on information and belief, that the S. S. *Gul Djemal* may be operated and managed for account of said Seire-Seffain Steamship Company, or may be manned and operated by a master, officers, engineers and crew construc-
155 tively employed and paid by the Turkish Government, but in fact directly employed and paid by Seire-Seffain Steamship Company, which is a separate legal entity, distinct from the Turkish Government; and that, although said Turkish Government may in the last analysis allow credit in accounting to said Seire-Seffain Steamship Company for the compensation of said officers and crew, said officers and crew may, in fact, be employees of said Seire-Seffain Steamship Company; and further, that, although the S. S. *Gul Djemal* may be constructively in the possession of the Government of the Kingdom of Turkey, nevertheless the said S. S. *Gul*
156 *Djemal* may since have been and may be now in the actual possession of Seire-Seffain Steamship Company for account of the Government of Turkey; in other words, your petitioner represents that said S. S. *Gul Djemal* may be operated and managed as a commercial carrier for hire just as the ships of the United States of America are being operated as commercial carriers for hire by private American steamship companies as agents, and your petitioner refers to the policy of the United States of America, declared by statutes approved March 9, 1920, and June 5, 1920, to recognize the liability of its

merchant ships, although it substitutes a convenient action *in personam* against the United States of America in lieu of the action *in rem*. 157

Your petitioner further respectfully represents that, without in any way impugning the integrity of the said Ambassador of the Kingdom of Spain to the United States of America or the conclusions set forth by said Ambassador in the above suggestion, said statements of the said Ambassador, as conclusions, may, to his conception of the legal significance of the word "possession", be correct, but that the facts on which said conclusions are reached, and the issue whether or not said S. S. *Gul Djemal* is actually in the possession of the Turkish Government, in the persons of officers and a crew employed and paid by said Turkish Government, should be more fully before this Court before the prayer of the said Ambassador of the Kingdom of Spain for immunity from process in this Court can be properly determined. 158

Your petitioner further respectfully represents, on information and belief, that by the terms of the Treaty about to be concluded between the Entente Nations and the Turkish Government, the S. S. *Gul Djemal* will become the property of the said Entente Nations; that said S. S. *Gul Djemal* is now practically under the control of said Entente Nations, acting through the Inter-Allied Maritime Transport Council, an international body created by the Entente Nations; reference being made to the consent of the Entente Powers attached to said charter party. Your petitioner further represents that the S. S. *Gul Djemal* was allowed to depart from Constantinople only on guarantees given by the Seire-Seffain Steamship Company to the Entente Nations that the ship would return to Constantinople; that the British Ministry of Shipping in New York is communicating with the British Ministry of Shipping in London, with a view to the protection of the interests of the Entente 159

160 Nations in the S. S. *Gul Djemal;* that the S. S. *Gul Djemal* has now on board one thousand tons of cargo approximately, on which the freight has been prepaid to your libellant, as agent of the charterer of said ship; that the charterer has not instigated the present appeal for immunity; that the S. S. *Gul Djemal,* irrespective of any release from the custody of the Marshal, may in her present condition, unless the discharge of cargo is contemplated, experience considerable delay in clearing from the Port of New York; that the British Ministry of Shipping in New York is expecting advices by cable from the British Ministry of Shipping in London, and your petitioner respectfully suggests to this Honorable Court
161 that the interests of the Entente Nations, with whom the United States of America was associated in the war against the German Government, which was allied with the Turkish Government, are paramount to the interests of the Turkish Government, with which the United States of America is on non-amicable terms; and your petitioner further represents that said interests of the Entente Nations and the interest of citizens of the United States and citizens of friendly Powers, who have advanced to the S. S. *Gul Djemal,* on the credit of the ship, One hundred thousand Dollars ($100,000) approximately, are paramount to the interests of the Turkish Government,
162 and that considerations of comity, which are predicated on respect for foreign sovereigns, do not require a recognition in the United States of America by this Honorable Court of a prerogative of sovereignty, in the Turkish Government, based on an alleged ownership and possession which the Turkish Government could not successfully assert in the Port of Constantinople.

Your petitioner respectfully represents that the relief prayed for should be denied, for the following reasons:

1. The Turkish Government is not qualified to appear before this Court as a claimant of the S. S. *Gul Djemal;* 163

2. The Turkish Government is not qualified to claim immunity in this Court in the person of a Turkish Naval Officer;

3. The certificate of the Department of State of the United States of America, attached to the said suggestion of the Spanish Ambassador, is not sufficient in respect to the authority or power of the Spanish Ambassador to act on behalf of the Government of Turkey in respect to the latter's property, so the suggestion is impotent;

4. The protection of the property of the Government of Turkey in the United States of America is not the recognized province of the Spanish Ambassador, so the suggestion herein is impotent; 164

5. The facts alleged in the suggestion are not verified by the Department of State of the United States of America, so the suggestion is impotent;

6. The said suggestion by the Spanish Ambassador is made in a personal and not an official capacity and is, therefore, inconclusive on this Honorable Court;

7. There is no suggestion by the United States of America before this Honorable Court that the S. S. *Gul Djemal* should be released from arrest under the process of this Court; 165

8. The S. S. *Gul Djemal* is neither a ship in the possession of a recognized foreign governmental official, nor a ship engaged in a governmental enterprise;

9. The S. S. *Gul Djemal*, owned and possessed by the Seire-Seffain Steamship Company, is subject to the process of this Court.

166 10. Considerations of comity cannot be predicated on the doctrine of respect for a foreign sovereign in the present instance and do not require the release of the S. S. *Gul Djemal* to the detriment of American citizens and the possible detriment to the interest of the Entente Nations.

WHEREFORE, your petitioner respectfully prays this Honorable Court not to discharge the said S. S. *Gul Djemal* from the custody of the United States Marshal for the Southern District of New York under the process of this Court, pending the orderly course of the litigation under the libel herein, and your petitioner further
167 respectfully prays, in the alternative, that this Court, before the S. S. *Gul Djemal* is declared immune from the process of this Court, permit the traverse of the allegations in said suggestion contained, so that the issues of fact and law may be determined by this Court, or that this Honorable Court require the presentation of a suggestion containing a full statement of the status of the S. S. *Gul Djemal* and the Seire-Seffain Steamship Company, supported by authenticated documents, and that said suggestion contain a certificate by the Department of State of the United States of America that the Ambassador to the United States from the Kingdom of
168 Spain is recognized, by the United States of America, as qualified to file a suggestion on behalf of the Government of Turkey in respect to property belonging to the Government of Turkey situated in the United States of America.

And your petitioner will ever pray, etc.

HARRINGTON, BIGHAM & ENGLAR,
Proctors for Petitioner,
No. 64 Wall Street,
Borough of Manhattan,
New York City.

169

STATE OF NEW YORK }
County of New York } ss.:

ONNIK NEVROUZ, being duly sworn, deposes and says:

That he is Treasurer of MOUNT ROYAL STEAMSHIP COMPANY, LTD., the corporation petitioner herein; that he has read the foregoing petition and knows the contents thereof and that the same is true, to the best of his knowledge, information and belief.

That the reason this verification is made by deponent and not by Mount Royal Steamship Company, Ltd., is that said Mount Royal Steamship Company, Ltd., is a corporation.

170

ONNIK NEVROUZ.

Sworn to before me this 10th day of December, 1920.

IRENE C. HOLMES,
(N. S.) Notary Public,
Kings Co. 172.
Cert. filed N. Y. Co. 438.

171

172

PETITIONER'S EXHIBIT 1.

TRANSLATION.

S. S. "Gul Djemal".

CHARTER PARTY.

It is this day mutually agreed between H. Hussein Bey, the Managing Director of Seire-Seffain S. S. Company of Constantinople, the Owners of S. S. "Gul Djemal" of (5071) tons gross, on the one part, and M.
173 George Dede Oglu, resident at Arabian Han No 133 hereafter called the Charterer, on the other part, for a voyage from Constantinople to New York and return, as follows:—

Art. 1. The Owners agree to let and the Charterer agrees to hire the S. S. "Gul Djemal" for a voyage from Constantinople to New York and return.

Art. 2. S. S. "Gul-Djemal" shall be insured against all risks for a sum of (300,000) Three Hundred Thousand Pounds Turkish in the name of the Seire-Seffain Company for a voyage to New York and return. All insurance ex-
174 penses shall be paid by the Charterer. The Seire-Seffain will not sail the ship unless an Insurance Policy is obtained by the Charterer, who will be responsible for all expenses and losses which may arise in respect of the above delay.

Art. 3. M. George Dédé Oglu agrees to hire on (Time charter) the S. S. "Gul-Djemal" for a sum of (50000) Fifty thousand Pounds Turkish per month. All expenses as coal, water, oil, and other materials necessary for the

sailing of the above ship—except the payment of the crew of S. S. "Gul-Djemal" shall be borne by him—M. Dede Ogly—thirty days being considered one month. 175

Art. 4. The Time of the Charter Party is a month and a half, and begins from the date of the delivery of S. S. "Gul-Djemal" to M. Dede Ogly, the Charterer who will use the above ship for the purpose of transport of passengers and cargo from Constantinople to New York and return.

Art. 5. The Charterer, M. Dede Ogly, undertakes to pay the agreed sum (1667) sixteen hundred and sixty seven Pounds Turkish per day in case he will not be able to redeliver the ship to the Owners at Constantinople, after the elapse of forty five days. If the steamer arrives back before the elapse of forty five days, Seire-Seffain agrees to return the said sum per day. It is hereby agreed that S. S. "Gul-Djemal" shall be redelivered to the Owners, in the same perfect condition as when received, on her arrival at Constantinople. If not a demurrage of 500£t Five hundred Pounds Turkish per day shall be paid by the Charterer. The Owners have the right to detain the cargo loaded on board of S. S. "Gul-Djemal", in case the Charterer is not able to pay indemnities of demurrage, and the hire of the surplus days of the Charter Party. 176 177

Art 6. The Owners undertake to deliver the above ship to the Charterer on the 5th Oct. ,1920, except in case of force majeur. The Payment of hire begins from the day after the delivery of the above ship. The Charterer, M. Dede Ogly agrees to pay in full, in cash the sum of (75000) Seventy five Thousand Pounds Turkish to the Owners at Constantinople on 25th Sept., 1920, as the payment of hire of one month and half.

178 Art. 7. M. George Dédé Oglu undertakes to pay the sum of (5000£t) Five Thousand Pounds Turkish as a quarantee to the Owners within 24 hours after the signing of this Charter Party. It is mutually agreed that the Owners will consider themselves free to record the said sum of guarantee as an income to their Company in case the Charterer will not be able to pay in full the payment of hire on the 25th Sept.-1920. It is also agreed that in case the Allies object to the sailing of the ship after the payment of hire, the Owners will have to return the sum of Guarantee to the Charterer.

179 Art. 8. The permission which will be given by the British Captain of the Port of Constantinople authorizing the sailing of the above ship to America Will be accepted as an indisputable document by both Parties.

Art. 9. S. S. "Gul-Djemal" will be examined by the Officials appointed by the British Captain of the Port of Constantinople in presence of Official or Officials of Seire-Seffain Company and those of M. Dédé Oglu. In case a difference arises in respect of the necessary equipments and accommodation for the sailing of this ship, the decision which will be given by the British Captain of the Port of Constantinople, will be respected by both
180 parties.

Art. 10. It is hereby agreed that the Charterer will have to sail S. S. "Gul-Djemal" after the elapse of fifteen days of the arrival of the said ship at New York. In case he fails to do so, the Master of the said ship, will provide all the sailing materials and return without being obliged to take any legal proceedings. The Charterer Dédé Oglu, will have no right to claim any losses or indemnities with regard to such like return voyage of the said steamer. It is also agreed that the Charterer will

pay the sum of (20,000) twenty thousand Pounds Turkish 181
as a guarantee against the expenses of such like return voyage, in case he fails to respect the rights of this article of this charter party.

Art. 11. The deck and engine Officers shall be fed free of charge by the Charterer from the day of their departure from Constantinople to the day of the arrival back. But the food of the crew of the said ship shall be supplied by the Owners.

Art. 12. Any difference which may arise in respect of this Charter-Party shall be settled at Constantinople by arbitrators who will be appointed by both Parties. 182

Art. 13. This Charter-Party has been exchanged in duplicate on this day of 4th September, 1920.

"This Charter is made with the Consent of the Allied Powers on the express conditions that in the event of the coming into execution of Article 258 (1) and (2) of the 'Conditions of Peace' between the Allied Powers and Turkey the same shall cease and that all claims ipso facto between all parties concerned respecting ship, cargo and freight, shall be referred to, and settled by Arbitration.

No claim whatsoever in respect of the Charter and the consequences thereof shall attach to the Allied Powers or 183
to any Officer in the service of the said Powers or any of them.

Charter to be signed in the Offices of the Allied Captains of the Port and witnessed by British Captain of

184 the Port and another Allied Captain of the Port, if desirable.''

WITNESSED.

15 Sept. 1920

(SIGNED) HAROLD WOOD.
Lieut. R.N.V.R.

(CANCELLED STAMPS)
(SIGNED) H. HUSSEIN BEY

WITNESS.
(SIGNED) GEO. T. ELLEL (SIGNED) M. GEORGE DEDE OGLU
CAP. R. N.
185 British Captain of the Port
Constantinople
(SEAL) BRITISH CAPTAIN OF PORT
15 SEP 1920
CONS/PLE

EXTRA CLAUSE

If vessel is detained longer than 15 days at New York Charterer will pay Master sixteen hundred and sixty seven pounds Turkish for each extra day.

(SIGNED) M. GEORGE DEDE OGLU Witness 15.9.20
186 (SIGNED) GEO. T. ELLEL

(SIGNED) H. HUSSEIN BEY Cap. R.N.
British Captain of the
Port Constantinople

187

SCHEDULE "L".

Address Official Communications To
The Secretary of State
Washington, D. C.
(Department Seal)

Department of State
Washington
December 16 1920.

Messrs. Purrington & McConnell,
Counsellors at Law,
52 Wall Street,
New York, N. Y.

188

Gentlemen:

The Department has received your letter of the 10th instant requesting data upon existing relations between the United States and Turkey.

In reply I beg to state that although there was no declaration of war between the two countries, on the 20th of April 1917, upon the initiative of the Turkish Government, diplomatic relations were severed and have not since been resumed.

Upon the severance of those relations, the Swedish Legation at Constantinople took charge of American interests in Turkey, and the Spanish Embassy at Washington assumed charge of Turkish interests in the United States.

189

After the conclusion of an Armistice between the Entente Powers and Turkey, an American High Commissioner was sent to Constantinople, and some of the American Consuls returned to their former posts. But the High Commissioner has no formal diplomatic relations with the Turkish Government and these Consular Officers, although performing certain Consular functions,

190 have no exequaturs and maintain no official relations with the local authorities.

I am, Sir,

Your obedient servant,
For the Acting Secretary of State:
(Signed) ALVEY A. ADEE
Second Assistant Secretary.

711/67/14

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SCHEDULE "M".

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

MOUNT ROYAL STEAMSHIP COMPANY, LTD.,
Libellant,

against

S. S. "GUL DJEMAL," her engines, boilers, etc.
and four other causes

194

HARRINGTON, BIGHAM & ENGLAR, for Libellant, Mount Royal Steamship Company;

HARDY, STANCLIFFE & WHITAKER, for Libellant, Union Stevedoring Corporation;

PURRINGTON & MCCONNELL, appearing specially for Claimant of S. S. "Gul Djemal" and the respondents.

195

KNOX, *D. J.*: The question as to whether I should, in view of the suggestion filed herein by the Spanish Ambassador upon behalf of the Turkish Government, release the *Gul Djemal* from arrest is one of considerable importance and not free from doubt.

It is my opinion, however, that the motion should be denied not only as a matter of law but by reason of the practical consideration that by denying the motion the ship can upon appeal have corrected any error now made by me. If I were to grant the motion and such action

196 should hereafter be held by the appellate court to be erroneous the libellants would be without recourse to the ship.

The urgency of a prompt decision makes impossible any extended discussion of the law involved. I may say, however, that it does seem to me that in the very nature of things the relations now existing between this country and the Government of Turkey must, in some respects, differ from those that obtain between the United States and a government with which diplomatic relations are not severed.

If a breach of such relations means simply that thereafter a government may by indirection obtain and secure
197 for itself the same rights and privileges that would, but for the breach, be directly accorded it, the severance of relations is an idle ceremony so far as comity between nations is concerned.

In recognition of that comity which, under the law of nations, exists between friendly states, this Court, in litigations such as *The Carlo Poma,* 259 Fed. 369, and kindred cases, has from time to time released from arrest the property of foreign governments when the ambassadors of such governments have suggested to us the sovereign character of the ownership thereof.

When, however, a foreign government has seen fit
198 to sever diplomatic relations with the United States, I am of opinion that it is not the function of the Court to entertain unofficial suggestion made upon behalf of such government.

The Courts of the United States are in no position to be acquainted with the degree of strain that in any particular instance may exist between this Government and one that has severed relations with us; and while, so far as appears, the release of the *Gul Djemal* would not embarrass the Department of State, I am, nevertheless, reluctant to establish a precedent that in conceivable circumstances might embarrass that Department.

It is true that a letter addressed to proctors for the 199
ship by the State Department recognizes the fact that the interests of Turkey within the United States are being looked after by the Spanish Ambassador, and it is he who now suggests to the Court that the *Gul Djemal* is owned by the Turkish Government. I am desirous of according all consideration to the Ambassador and his Government, but feel constrained to suggest that any protection to Turkish interests here involved should be by way of representations to the Department of State, and to say that in his present suggestion the Ambassador speaks not as the personal representative of the King of Spain, but unofficially, by virtue of the good offices which he has placed at the disposal of the Government 200
of Turkey. In such capacity I must respectfully decline to adopt his suggestion, and for the relief he asks relegate him to the Department of State.

December 22, 1920.

JNO. C. KNOX,
U. S. District Judge.

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SCHEDULE "N".

EMBAJADA DE ESPANA

WASHINGTON

23-23

WASHINGTON, D. C., DECEMBER 23, 1920.

My dear Mr. Secretary:

203 Subsequent to the severance of diplomatic relations between the Turkish Government and the United States, His Majesty's Government at Madrid officially instructed me to assume charge of Turkish Government interests in the United States, in which capacity I have had the honor to communicate and treat with this Department continuously.

I now have the honor to inform you that the steamship "GUL DJEMAL," which is owned, manned and operated by the Turkish Government, had been seized under process issued out of the United States District Court for the Southern District of New York.

204 I have received cabled instructions from His Majesty's Government at Madrid, acting at the instance of the Turkish Government at Constantinople, to do everything possible in my official capacity as the representative of the Turkish Government in the United States, to obtain the vessel's release because she is owned, manned and operated by the Turkish Government.

The Department would, therefore, honor me by advising that it recognizes the fact that I am officially in charge of the Turkish Governmental interests in the United States during the suspension of diplomatic relations between the two Governments; that no declaration

of war has been made by either Government as against the other, and that the treaties between the two nations are still in force. 205

Believe me,
My dear Mr. Davis,
Very sincerely yours,
(signed) JUAN RIANO

The Honorable
NORMAN H. DAVIS,
Acting Secretary of State of the United States.

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SCHEDULE "O".

DEPARTMENT OF STATE

WASHINGTON

WASHINGTON, D. C., DECEMBER 24, 1920.

My dear Mr. Ambassador:

I beg to acknowledge receipt of your note of December 23, 1920 in which you state that the steamship "GUL DJEMAL" which is owned, manned and operated by the
209 Turkish Government has been seized under process issued out of the United States District Court for the Southern District of New York and that you have been instructed by His Majesty's Government at Madrid acting at the instance of the Ottoman Government to do everything possible to obtain the release of the vessel mentioned. It is understood that you desire a statement that the Department recognizes that you are "officially in charge of the Turkish governmental interests in the United States during the suspension of the diplomatic relations between the two governments; that no declaration of war has been made by either government as
210 against the other, and that the treaty between the two countries are still in force."

Inasmuch as you have for a considerable period been Ambassador recognized by the Department as representing Turkish interests in the United States the Department will of course be glad to give consideration to any representation which you desire to make to this government on behalf of the Ottoman government in relation to the detention of the steamship "GUL DJEMAL." Although the diplomatic relations between the government of the United States and the government of Turkey were

severed on the initiative of the Turkish government no declaration of war has as you doubtless are aware been made by either government against the other. With respect to the status of the treaties between the United States and Turkey, I beg to say that in view of the interruption of relations between the two countries the Department prefers to refrain at this time from discussing the status of these treaties. 211

I am, my dear Mr. Riano,

Very sincerely yours,
(signed) Norman H. Davis

To Senor Don Juan Riano, 212
Ambassador of His Majesty the King of Spain
at Washington

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214

SCHEDULE "P".

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

MOUNT ROYAL STEAMSHIP COMPANY, LTD.,
Libellant,

against

S. S. "GUL DJEMAL," her engines, boilers, etc.

VACUUM OIL COMPANY,
Libellant,

215

against

S. S. "GUL DJEMAL," her engines, boilers, etc.

UNION STEVEDORING CORPORATION,
Libellant,

against

S. S. "GUL DJEMAL," her engines, boilers, etc.

D. T. MAGOWAN,
Libellant,

against

S. S. "GUL DJEMAL," her tackle, apparel, furniture and freight.

216

TERMINAL SERVICE CORPORATION,
Libellant,

against

S. S. "GUL DJEMAL," her engines, tackle and apparel, and

against

SEIBE-SEFFAIN STEAMSHIP COMPANY.

Upon the annexed affidavit of Frank J. McConnell, verified December 27th, 1920, and the suggestion of His

Excellency the Royal Ambassador and High Commissioner of the Kingdom of Spain, and the certificate of the Secretary of State of the United States that the said Ambassador is duly accredited to this government; letter of Secretary of State to Purrington & McConnell, and carbon copy of letter addressed by the Spanish Ambassador to the Department of State of the United States, and copy of reply of the said Department of State to the Spanish Ambassador, and on motion of Purrington & McConnell, proctors for claimant, sufficient cause appearing, 217

Let the libellants show cause at a Stated Term of this Court for the hearing of motions, to be held in Judges Chambers of Court Room No. 2 in the United States District Court, Woolworth Building, No. 233 Broadway, in the Borough of Manhattan, City of New York, on the 30th day of December, 1920, at 3 o'clock in the afternoon, or as soon thereafter as counsel can be heard, why the motion made by the claimant and decision thereon should not be reheard and an order entered herein vacating the said order and the several writs of attachment and of arrest heretofore issued out of this court in the said actions against the Turkish steamship *Gul Djemal* and all other property and monies within the Southern District of New York belonging to the Turkish Government, claimant of the vessel, the Administration Siere-Seffain, or their agents, and releasing said vessel and declaring her and said property and monies immune from process of this court, and dismissing the libels herein for want of jurisdiction of this court; 218 219

Let service of this order on the libellants or their respective proctors on or before December 29th, 1920, be deemed sufficient, and in the meantime and until the rehearing and determination of this motion and the entry of an order thereon, let proceedings on the part of all libellants against the *Gul Djemal* be stayed;

220 And the Clerk of this court is hereby directed to accept Notice of Special Appearances from proctors for claimant herein without requiring the usual stipulation for costs pursuant to Rule 6 of the Admiralty Rules of this District.

Dated, December 29th, 1920.

(Signed) Jno. C. Knox,
U. S. D. J.

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UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

MOUNT ROYAL STEAMSHIP COMPANY, LTD.; Vacuum Oil Company; Union Stevedoring Corporation; D. T. Magowan; and Terminal Service Corporation,
Libellants,

against

S. S. "GUL DJEMAL," etc.

224

STATE OF NEW YORK,
City of New York,
County of New York, } ss.:

FRANK J. McCONNELL, being duly sworn, deposes and says: I am a member of the firm of Purrington & McConnell, proctors appearing specially for the steamship *Gul Djemal*, her owner, the Turkish Government, and am familiar with the facts in these cases. 225

The steamship *Gul Djemal* in the above entitled five (5) actions is detained pursuant to process issued out of this court, although application for her release was considered by this court upon the suggestion of the Spanish Ambassador, which application and motion was denied.

The owner of the vessel, as the suggestion of the Spanish Embassy annexed to the original application

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226 shows, is the Government of Turkey, which Government desires that the vessel be released from seizure in order that she may sail back to Turkey as soon as possible.

Subsequent to the presentation to and refusal of this Honorable Court to vacate process issued against *Gul Djemal*, his Excellency, the Ambassador, of His Majesty the King of Spain at Washington, on December 23rd, 1920, formally communicated with the Department of State of Washington, D. C., requesting an official acknowledgment and verification by the said Department of State of the United States that it recognized the said Ambassador as representing Turkish interests in the United States. An original copy of the letter of the said
227 Ambassador addressed to the Honorable Norman H. Davis, Acting Secretary of State of the United States, is annexed hereto and marked Annex "A"; and copy of the reply thereto, dated December 24th, 1920 (the original of which is retained in the files of the Embassy), addressed to the Spanish Ambassador, officially reciting recognition of the said Ambassador by the Department of State, is annexed hereto and marked Annex "B."

Wherefore, an application for a rehearing of the merits of this controversy is respectfully presented to this Honorable Court and an order to show cause is requested and prayed for so that the claim of the Turkish
228 Government may be presented as expeditiously as possible, and the vessel immediately released from her attachments.

(Signed) Frank J. McConnell.

Sworn to before me this 27th day of December, 1920.

James D. Brown,
Notary Public,
New York County.
County Clerk's No. 623.
Register No. 1651.
(Seal)

229

ANNEX "A".

EMBAJADA DE ESPANA

WASHINGTON

23-23

WASHINGTON, D. C., DECEMBER 23, 1920.

My dear Mr. Secretary:

Subsequent to the severance of diplomatic relations between the Turkish Government and the United States, His Majesty's Government at Madrid officially instructed 230
me to assume charge of Turkish Governmental interests in the United States, in which capacity I have had the honor to communicate and treat with this Department continuously.

I now have the honor to inform you that the steamship "GUL DJEMAL," which is owned, manned and operated by the Turkish Government, had been seized under process issued out of the United States District Court for the Southern District of New York.

I have received cabled instructions from His Majesty's Government at Madrid, acting at the instance of the Turkish Government at Constantinople, to do 231
everything possible in my official capacity as the representative of the Turkish Government in the United States, to obtain the vessel's release because she is owned, manned and operated by the Turkish Government.

The Department would, therefore, honor me by advising that it recognizes the fact that I am officially in charge of the Turkish Governmental interests in the United States during the suspension of diplomatic relations between the two Governments; that no declaration of war has been made by either Government as against

232 the other, and that the treaties between the two nations are still in force.

Believe me,
My dear Mr. Davis,
Very sincerely yours,
(signed) JUAN RIANO

The Honorable
NORMAN H. DAVIS,
Acting Secretary of State of the United States.

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ANNEX "B".

DEPARTMENT OF STATE

WASHINGTON

WASHINGTON, D. C., DECEMBER 24, 1920.

My dear Mr. Ambassador:

I beg to acknowledge receipt of your note of December 23, 1920, in which you state that the steamship "GUL DJEMAL" which is owned, manned and operated by the Turkish Government has been seized under process issued out of the United States District Court for the Southern District of New York and that you have been instructed by His Majesty's Government at Madrid acting at the instance of the Ottoman Government to do everything possible to obtain the release of the vessel mentioned. It is understood that you desire a statement that the Department recognizes that you are "officially in charge of the Turkish governmental interests in the United States during the suspension of the diplomatic relations between the two governments; that no declaration of war has been made by either government as against the other, and that the treaty between the two countries are still in force."

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Inasmuch as you have for a considerable period been Ambassador recognized by the Department as representing Turkish interests in the United States the Department will of course be glad to give consideration to any representation which you desire to make to this government on behalf of the Ottoman government in relation to the detention of the steamship "GUL DJEMAL." Although the diplomatic relations between the government of the United States and the government of Turkey were severed on the initiative of the Turkish government no

declaration of war has as you doubtless are aware been made by either government against the other. With respect to the status of the treaties between the United States and Turkey, I beg to say that in view of the interruption of relations between the two countries the Department prefers to refrain at this time from discussing the status of these treaties.

I am, my dear Mr. Riano,

Very sincerely yours,
(signed) NORMAN H. DAVIS

To SEÑOR DON JUAN RIANO,
Ambassador of His Majesty the King of Spain at
Washington

241

SCHEDULE "Q".

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

MOUNT ROYAL STEAMSHIP COMPANY, LTD.,
Libellant,

against

S. S. "GUL DJEMAL," her engines, boilers, etc.
and four other causes

242

Upon reargument of motion to release S. S. *Gul Djemal* from arrest.

HARRINGTON, BIGHAM & ENGLAR, for Libelant, Mount Royal Steamship Company;

HARDY, STANCLIFFE & WHITAKER, for Libelant, Union Stevedoring Corporation;

243

PURRINGTON & MCCONNELL, appearing specially for Claimant of S. S. *Gul Djemal* and the respondents.

KNOX, D. J.: Since rendering my decision of December 22, 1920, wherein I denied the motion to release the *Gul Djemal* from arrest, the following letters were exchanged between the Spanish ambassador and the Acting Secretary of State:—

244

EMBAJADA DE ESPANA

WASHINGTON

WASHINGTON, D. C., December 23, 1920.

"MY DEAR MR. SECRETARY:

"Subsequent to the severance of diplomatic relations between the Turkish Government and the United States, His Majesty's Government at Madrid officially instructed me to assume charge of Turkish Governmental interests in the United States, in which capacity I have had the honor to
245 communicate and treat with this Department continuously.

"I now have the honor to inform you that the steamship "GUL DJEMAL", which is owned, manned and operated by the Turkish Government, has been seized under process issued out of the United States District Court for the Southern District of New York.

"I have received cabled instruction from His Majesty's Government at Madrid, acting at the instance of the Turkish Government at Constantinople, to do everything possible in my official capacity as the Representative of the Turkish Government in the United States, to obtain the vessel's release because she is owned, manned and
246 operated by the Turkish Government.

"The Department would, therefore, honor me by advising that it recognizes the fact that I am officially in charge of the Turkish Governmental interests in the United States during the suspension of diplomatic relations between the two Governments; that no declaration of war has been made by either Government as against the other, and that the treaties between the two nations are still in force.

"Believe me,
"My dear MR. DAVIS,
"Very sincerely yours,"
(signed) JUAN RIANO

247

DEPARTMENT OF STATE

WASHINGTON

WASHINGTON, D. C. December 24 1920.

"MY DEAR MR. AMBASSADOR:—

"I beg to acknowledge receipt of your note of December 23, 1920, in which you state that the steamship *Gul Djemal* which is owned, manned and operated by the Turkish Government has been seized under process issued out of the United States District Court for the Southern District of New York and that you have been instructed by his Majesty's Government at Madrid acting at the 248
instance of the Ottoman Government to do everything possible to obtain the release of the vessel mentioned. It is understood that you desire a statement that the Department recognizes that you are "officially in charge of the Turkish governmental interests in the United States during the suspension of the diplomatic relations between the two governments; that no declaration of war has been made by either government as against the other, and that the treaty between the two countries are still in force."

"Inasmuch as you have for a considerable period been Ambassador recognized by the Department as representing Turkish interests in the United States the Department will of course be glad 249
to give consideration to any representation which you desire to make to this government on behalf of the Ottoman government in relation to the detention of the steamship *Gul Djemal.* Although the diplomatic relations between the government of the United States and the government of Turkey were severed on the initiative of the Turkish government no declaration of war has as you doubtless are aware been made by either government against the other. With respect to the status of the treaties between the United States and Turkey, I beg to say that in view of the interruption

250 of relations between the two countries the Department prefers to refrain at this time from discussing the status of these treaties.

"I am, my dear Mr. Riano,

"Very sincerely yours,"

(signed) Norman H. Davis

"To Senor Don Juan Riano,

"Ambassador of His Majesty the King of Spain at Washington"

These letters were brought to my attention, and formed the basis of a rehearing of the original motion.

I have given the letters and the arguments made thereon careful consideration and have concluded that
251 I should adhere to my original decision. In saying this I wish it understood that this Court is anxious, within the limits of what it conceives to be its power and discretion, to accord to the Spanish Ambassador and to the Ottoman Government every courtesy, right, privilege and immunity to which either may be entitled under the Law of Nations.

The fact, however, remains that diplomatic relations between the United States and Turkey were severed in 1917, and such relations have not been resumed. I realize, of course, that a breach of diplomatic relations does not bring about a cessation of all intercourse between the
252 states concerned. This is amply established by the letters above quoted and by the invariable line of conduct pursued in like instances throughout many years of history. Nevertheless, I cannot divorce my mind from the firm conviction that once diplomatic relations are severed, the intercourse thereafter to be carried on between the states should, so far as this government is concerned, be exclusively confined to that department which under our form of government is charged with the management of foreign affairs. My investigations of international law lead to the conclusion that a severance of diplomatic re-

lations is a non-amicable measure, and there is a possibil- 253
ity that at any time one government or the other may engage in various methods of retorsion or retaliation without a state of war resulting therefrom. For example, a pacific blockade or an embargo may be declared, and possibly other action taken that is in its essence political rather than legal. If, in a given case, it were the desire of this Government to take advantage of any such measure, this Court would not be informed of the fact, and in so far as the Court attempted to deal with property which might be the subject matter of executive action, it would run the risk of completely frustrating the same. It is doubtless true, as is represented to me, that there exists between Turkey and the United States, notwithstanding 254
the severance of diplomatic relations, a considerable degree of cordiality. Indeed, so far as I am informed, there is no reason why, from a governmental standpoint, the *Gul Djemal* should not be declared immune from process. This view, however, so far as it affects this Court, is a matter of belief that falls short of knowledge. If the amity existing between the two states is such that this Government wishes the vessel released, I will gladly release her upon a suggestion that emanates from the Department of State.

The adoption of a suggestion short of one originating in such Department carries with it, I think (at least 255
under circumstaces differing from those now present) the possibility not only of confusion between co-ordinate branches of this Government, but also the likelihood of embarrassment.

If, in cases where diplomatic relations have been severed, such matters are left to the exclusive management of the Executive, all such danger will be avoided.

The views I entertain upon the subject would seem to have some support in the statutory law of the United States. Section 202 of the Revised Statutes reads:—

256 "The Secretary of State shall perform such duties as shall from time to time be enjoined on or intrusted to him by the President relative to correspondences, commissions, or instruction to or with public ministers or consuls from the United States, or to negotiations with public ministers from foreign states or princes, or to memorials or other applications from foreign public ministers or other foreigners, or to such other matters respecting foreign affairs as the President of the United States shall assign to the Department, and he shall conduct the business of the Department in such manner as the President shall direct."

257 This statute to my mind indicates that the action I am asked to take here, in the absence of a suggestion from the State Department, is not within the purview of my authority. Indeed, the letter of the Acting Secretary of State above quoted shows that that Department will gladly consider any representations that the Spanish Ambassador wishes to make with reference to the *Gul Djemal*. I quote:—

"Inasmuch as you have for a considerable period been Ambassador recognized by the Department as representing Turkish interests in the United States the Department will of course be glad to give consideration to any representation which you
258 desire to make to this government on behalf of the Ottoman government in relation to the detention of the steamship 'Gul Djemal.'"

The question being one pre-eminentlly, and I think exclusively, within the province of the State Department, I accordingly decline to release the ship save upon a suggestion that emanates from that Department.

January 3, 1921.

JNO. C. KNOX,
U. S. District Judge.

(SEAL)

259

SCHEDULE "R".

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

MOUNT ROYAL STEAMSHIP COMPANY, LTD.,
Libellant,

against

S. S. "GUL DJEMAL", her engines, boilers, etc.
AND FOUR OTHER CAUSES.

260

Sirs:

PLEASE TAKE NOTICE that annexed is a copy of an order, the original of which will be presented to the Clerk of this Court for settlement and signature on the 10th day of January 1921, at 10 a. m.

Yours, &c.,
HARRINGTON, BIGHAM & ENGLAR,
Proctors for Libellant,
64 Wall Street,
New York City.

261

To:
Messrs. PURRINGTON & MCCONNELL,
Proctors for Claimant,
52 Wall Street,
New York City.

262

At a Stated Term of the District Court of the United States, held in and for the Southern District of New York, at the United States Court House and Post Office Building, in the Borough of Manhattan, City of New York, on the 10th day of January, 1921.

Present:
Honorable JOHN C. KNOX,
United States District Judge.

263

MOUNT ROYAL STEAMSHIP COMPANY, LTD.,
Libellant,

against

S. S. "GUL DJEMAL", her engines, boilers, etc.
AND FOUR OTHER CAUSES.

264 It appearing that a libel was filed herein on the 2nd day of December, 1920, praying that process issue against the S. S. *Gul Djemal*, her engines, boilers, etc., and said process having issued to the Marshal for the Southern District of New York, and the said Marshal having arrested said Steamship, and Purrington & McConnell, appearing specially on behalf of the S. S. *Gul Djemal*, the Turkish Government, and the Administration Seire-Seffain for the purpose of objecting to the jurisdiction of the court and submitting the suggestion of His Excel-

lency, the Ambassador of His Majesty, the King of Spain, 265
at Washington, in charge of Turkish interests, having moved this Court for an order releasing the *Gul Djemal* from attachment and declaring the said steamship immune from the process of this Court:

Now, on reading and filing the process, the petition submitted by the Libellant, and the suggestion of the Royal Ambassador of His Excellency, the King of Spain, to the United States, the official status of said Ambassador as the Spanish Ambassador to the United States being authenticated and vised by the Secretary of State of the United States, in which suggestion it is stated that the said Steamship *Gul Djemal* at all the times mentioned in the libel was and now is owned by the Government of 266
Turkey and in the possession of the Government of Turkey, and after hearing William A. Purrington, Esq., of Purrington & McConnell, Proctors appearing specially as aforesaid, in support of said motion, and Harold V. Amberg, Esq., of Harrington, Bigham & Englar, Proctors for the Libellant, in opposition thereto, and having ruled on December 22, 1920, that this Court, in view of the severance of diplomatic relations between the Government of Turkey and the United States of America and the international relations involved thereby, is in no position to adopt as conclusive on this Court the suggestion of the Spanish Ambassador herein, and having respectfully re- 267
ferred the Spanish Ambassador to the Department of State of the United States, and

At a rehearing granted December 29th, 1920, and held December 30th, 1920, on reading and filing certain letters, which have since the ruling of December 22nd, 1920, passed between the Spanish Ambassador and the Department of State of the United States, and having heard William A. Purrington, Esq., of Purrington & McConnell, in support of said motion and George S. Brengle, Esq., of Harrington, Bigham & Englar in opposition

268 thereto, and having ruled on January 3rd, 1921, that, under the circumstances, the question is within the province of the State Department and that any suggestion of immunity of the S. S. *Gul Djemal* should come to this Court from the State Department, it is

ORDERED that the motion that the S. S. *Gul Djemal* be released from arrest be and the same is hereby denied, and that the denial of the original motion herein, on December 22nd, 1920, is in all respects affirmed.

FURTHER ORDERED, that, as petition is about to be presented by the master of the *Gul Djemal*, specially appear-
269 ing, to the United States Supreme Court at Washington for a Writ of Prohibition and/or Mandamus; let all proceedings be stayed against the steamship *Gul Djemal*, her owner, master, etc., until the hearing and determination upon the said writ or writs by the United States Supreme Court and the receipt by the District Court of a mandate thereon.

JNO. C. KNOX,
U. S. D. J.

(Stamp Endorsement)
U. S. District Court.
270 Filed Jan 11, 1921
S. D. of N. Y.

271

SCHEDULE S.

At a Stated Term of the District Court of the United States for the Southern District of New York, held in the Court Rooms thereof, U. S. Post Office Building, in the Borough of Manhattan, City of New York, on the 26th day of January, 1921.

Present—

HONORABLE JOHN C. KNOX,
United States District Judge.

272

MOUNT ROYAL STEAMSHIP COMPANY, LTD., Libelant, *against* STEAMSHIP GUL DJEMAL, her engines, boilers, etc.	*Order allowing filing of Special Claim and Exceptions to Writ without Stipulation for Costs, for a Stay, &c.*

273

It appearing to the Court that Hussein Lutfi Bey, as master of the steamship *Gul Djemal*, by his proctors Purrington & McConnell appearing specially for the purpose of objecting to the jurisdiction of the court and to the arrest of the steamship *Gul Djemal*, and for no other purpose, has filed a special claim to said steamship and a special plea in abatement for the purposes of claiming the immunity of the said steamship from arrest

and the other purposes in the said claim mentioned, and has filed exceptions to the libel on the ground that the steamship *Gul Djemal* is immune because she is, and at the time of her arrest under process herein was, in the possession of and owned by the Turkish Government, and, among other prayers, has prayed that if the libelant herein desires to contest the facts set forth in the said claim, the libelant be required within seven days from the filing of the said claim to file a traverse thereof, or be forever foreclosed from challenging the facts therein stated, and after hearing John M. Woolsey of Counsel appearing specially in support of the prayers thereof and George S. Brengle in opposition thereto.

It is now by the Court

ORDERED

1. That the said claim and exceptions be allowed to be filed without the filing of any stipulation or security for costs.

2. That if the libelant herein desires to contest the sufficiency of the allegations of fact set forth in said claim to constitute a ground for the immunity of said steamship *Gul Djemal* from the process of this Court or to challenge the truth of the facts therein set forth, the libelant is required, within seven days from the service of a copy of this order and of said special claim and exceptions on the said libelant or its proctors, to except demur or otherwise plead to said special claim, failing which the libelant shall be forever foreclosed from challenging the facts in said claim stated.

3. That all proceedings herein be stayed pending a 277
hearing, decision and order or decree on any issues of law or fact which may be raised by said claim and any exception, demurrer or plea thereto which the libelant may make.

4. That the time of the steamship *Gul Djemal* to answer or otherwise plead to the libel herein be, and it hereby is, extended for a period of 20 days after decision on said hearing and entry of order or decree thereon.

5. That any hearing to be had on the said claim and the issues which are to be raised by any traverse thereto 278
shall be heard in open Court before one of the Judges of this Court, and that on the said hearing the evidence shall be strictly limited to the issues which are raised with regard to the questions of ownership and possession of the said steamship and of her immunity from the process of this Court.

JOHN C. KNOX,
U. S. D. J.

279

280

SCHEDULE T.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

MOUNT ROYAL STEAMSHIP COMPANY, LTD., Libellant, *against* S.S. "GUL DJEMAL", her engines, boilers, etc.	Special Claim and Exception to the Writ and Special Plea in Abatement.

281

And now comes Hussein Lutfi Bey, intervening and appearing specially as master of the steamship *Gul Djemal* for the interests of the Turkish or Ottoman Government, in the said steamship *Gul Djemal*, etc. as the same are arrested or attached by the Marshal under process of this Court at the instance of the MOUNT ROYAL
282 STEAMSHIP COMPANY, LTD., for the purpose of objecting to the arrest, seizure and detention of the said steamship *Gul Djemal* under writs of arrest which have been issued herein, solely for the purpose of claiming immunity from arrest for the said steamship, on the ground that the said steamship *Gul Djemal* is owned by and in the exclusive possession of the Turkish or Ottoman Government a Foreign Sovereign at peace with the United States and in the service of the Turkish Government and under its exclusive direction and control.

And the said Hussein Lutfi Bey avers: 283

1. That he is and at the time of said arrest was the master of the said steamship *Gul Djemal*, etc.,

2. That, at the time of the arrest of said steamship, he was, and still is, employed and paid by the Turkish Government.

3. That at the time of said arrest he was in lawful possession of the said steamship *Gul Djemal* as master and agent and representative of the Turkish Government.

4. That the Turkish or Ottoman Government is the 284
true and *bona fide* owner of the said steamship and is now and at all the times mentioned in the libel and at the time of the issuance of process herein and of the arrest of the *Gul Djemal* under process of this Court a Foreign Sovereign at peace with the United States.

5. That no other person, corporation or government is the owner thereof, and

6. That as master he is the true and lawful bailee of the said steamship as representative and agent of the Turkish Government and, as such, entitled to the immediate possession thereof free of all liens, arrests, attachments, libels or claims; 285

Wherefore he prays to be admitted to file his claim solely for the purpose hereinabove mentioned without filing any stipulation or security for costs.

And for exceptions to the jurisdiction of this Court by the said Writ of Arrest or Attachment and proceed-

286 ings had thereon and as a special plea in abatement herein, the special claimant respectfully avers:

1. That at the time when the process was served upon the said steamship *Gul Djemal* she was, and is now, a vessel owned by and in the exclusive possession of the Turkish or Ottoman Government and under its exclusive direction and control, and

2. That the said Turkish or Ottoman Government is a Foreign Sovereign with whom the United States is now, and at all the times mentioned in the libel, and at the
287 time of the issuance of process herein and of the arrest of the steamship *Gul Djemal* under process of this Court was at peace.

WHEREFORE this claimant and exceptant appearing specially solely for the purpose and reasons as above stated alleges,

That the steamship *Gul Djemal* is, and should be declared, immune from arrest under process of this court for the reasons hereinabove stated, namely, that at time of the arrest that she was and is now owned by and in
288 exclusive possession of a foreign Sovereign Government at peace with the United States,

And prays

1. That the court will quash the said writ of arrest or attachment and the process issued thereunder, and release the steamship *Gul Djemal* at once from the arrest or attachment and from the custody of the Marshal and deliver her to this special claimant; or

2. That if the libelant herein desires to contest any question of law hereby raised or any of the facts herein

set forth, the libelant be required within seven days from 289
the filing hereof to file a traverse hereof or be forever foreclosed from challenging the facts herein stated.

3. That all proceedings herein be stayed pending a hearing on the issues of the ownership and possession of the said steamship and any other issues hereinabove raised, and that such hearing be limited to such issues only.

4. That this special claimant be not required to file any stipulation or other security for costs herein, and

5. That this special claimant have such other or fur- 290
ther relief as may be just in the premises.

HUSSEIN LUTFI BEY
Master appearing and claiming specially for the purposes above named only and for no other purposes whatsoever.

Subscribed and sworn to before me
this 26th day of January, 1921.
JAMES D. BROWN
Notary Public, New York County
County Clerk's No. 623 Register's No. 1651 291
(Seal)

PURRINGTON & MCCONNELL,
Proctors for Hussein Lutfi Bey, appearing specially for the purposes of objecting to the jurisdiction of the Court and to the arrest of the steamship *Gul Djemal* as above stated, and for no other purpose.

292

SCHEDULE U.

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

MOUNT ROYAL STEAMSHIP COMPANY, INC.,
Libellant,

against

293

S. S. "GUL DJEMAL", her engines, boilers, etc.

To the Honorable, the Judges of the District Court of the United States for the Southern District of New York.

The exception of Mount Royal Steamship Company, Ltd., libellant, to the Special Claim and Exception to the Writ and Special Plea in Abatement of Hussein Lutfi Bey, alleges as follows:

294

That it is alleged in the Special Claim and Exception to the Writ and Special Plea in Abatement that the Steamship *Gul Djemal* is owned and possessed by the Turkish or Ottoman Government.

As an exceptive allegation:

That the Turkish or Ottoman Government has heretofore and before the filing of the libel herein severed diplomatic relations with the United States of America; that

said diplomatic relations between the said Turkish or Ottoman Government and the United States of America have not since been resumed; and that the property of the Turkish or Ottoman Government is not entitled to immunity as prayed for. 295

WHEREFORE the libellant prays that the Exception to the Writ and the Special Plea in Abatement may be dismissed, and the libellant further prays that, if the said Claim, Exception and Special Plea are not dismissed, libellant may be granted leave to answer said Claim, Exception and Special Plea. 296

HARRINGTON, BIGHAM & ENGLAR,
Proctors for the Libellant,
Office and P. O. Address,
64 Wall Street,
Borough of Manhattan,
New York City.

297

298

SCHEDULE V.

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

MOUNT ROYAL STEAMSHIP COMPANY, LTD., Libelant, *against* The steamship GUL DJEMAL, her engines, etc.	Motion for Release of steamship from Arrest or Attachment herein.

299

Sirs:

PLEASE TAKE NOTICE that on the special claim and exception to the writ and special plea in abatement heretofore filed herein by Hussein Lutfi Bey, master of the steamship GUL DJEMAL, appearing specially for the purposes stated in said special claim and for no other purposes, and the exception and exceptive allegation of the libelant thereto, we shall on Thursday, February 10, 1921, at the Chambers of the Honorable John C. Knox, United States District Judge for the Southern District of New York, at 2 o'clock P. M., or so soon thereafter as counsel may be heard, move—

300

1. That the steamship GUL DJEMAL be formally released from seizure.

2. That process against the said vessel as the same is issued by this Court at the instance of the Mount Royal Steamship Company, Ltd., be quashed.

3. That the said steamship GUL DJEMAL be declared 301
immune from arrest under process of this Court because she is a vessel owned by and under the direction and control and in the exclusive possession of the Turkish or Ottoman Government, a foreign sovereign at peace with the United States.

4. That the said vessel be delivered to this special claimant as master thereof in the employ of the Turkish or Ottoman Government.

5. That this special claimant shall have such other or further relief as may be just in the premises. 302

PURRINGTON & MCCONNELL,
Proctors for Hussein Lutfi Bey,
appearing specially for the purpose of objecting to the jurisdiction of the Court and to the arrest of the steamship GUL DJEMAL under writ of this Court and for no other purpose.

303

304

SCHEDULE W.

At a Special Term of the United States District Court for the Southern District of New York, held in the Court Rooms thereof, U. S. Post Office Building, in the Borough of Manhattan, City of New York, on the 17th day of February, 1921.

Present: HONORABLE JOHN C. KNOX,
United States District Judge.

305

MOUNT ROYAL STEAMSHIP COMPANY, LTD.,
Libellant,

against

Steamship "GUL DJEMAL," her engines, boilers, etc.

306

On reading the special claim and exception to the writ and special plea in abatement of Hussein Lutfi Bey, master of the steamship "Gul Djemal"; the order allowing the filing of same, dated January 26th, 1921; and the exception or traverse of the libellant thereto; filed February 2nd, 1921, and the notice of motion of Purrington & McConnell, proctors for Hussein Lutfi Bey, appearing specially for the sole purpose of objecting to the juris-

diction of this court and to the arrest of the steamship 307
"Gul Djemal" under writ of this court, and for no other purpose, filed February 10th, 1921; and after hearing John M. Woolsey, Esq., of counsel, appearing specially in support of the special claim and exception to the writ and special plea in abatement and the prayers thereof and for the motion to release the "Gul Djemal" from arrest or attachment herein, and Harold V. Amberg, Esq., of counsel, in opposition thereto, and upon all the proceedings heretofore had herein, it is, now

BY THE COURT ORDERED: 308

I. That the motion for the release of the steamship from arrest or attachment herein be, and it is hereby denied; and

II. That the exception to the special claim and exception to the writ and special plea in abatement be, and it is hereby sustained; and further

III. That, as a petition is about to be presented by the master of the steamship "Gul Djemal," specially appearing, to the United States Supreme Court at Wash- 309
ington for a writ of prohibition and/or mandamus, to this court herein, all proceedings against the steamship "Gul Djemal," her owner, master, etc., be stayed until the hearing and determination upon the said writ or writs by the United States Supreme Court, and the receipt by the District Court of a mandate thereon, provided that if such application is not made to the Supreme Court on

310 or before Monday, March 7, 1921, this stay shall not continue except on good cause shown.

JNO. C. KNOX,
U. S. D. J.

We consent to the entry of the foregoing order.

HARRINGTON, BIGHAM & ENGLAR,
Proctors for Libellant.

HAROLD D. AMBERG,
of Counsel.

311

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313

SCHEDULE X.

EMBAJADA DE ESPANA

WASHINGTON

25-15

WASHINGTON, D. C., JANUARY 25, 1921.

My dear Mr. Secretary:

I beg to acknowledge receipt of your note of December 24th, 1920, in which you replied to mine of December 23rd., 1920, and stated that I have "been Ambassador recognized by the Department as representing Turkish interests in the United States" and that "the Department will of course be glad to give consideration to any representation which you desire to make to this Government on behalf of the Ottoman Government, in relation to the detention of the steamship 'GUL DJEMAL.'" 314

I have been instructed by my Government to assure the Government of the United States that the steamship GUL DJEMAL is the property of the Turkish Government, and to do everything possible in my official capacity as the Representative of the Turkish Government in the United States to obtain the release of the steamship GUL DJEMAL from seizure by process issued out of the United States District Court for the Southern District of New York. 315

In furtherance to these instructions, I therefore have the honor to request the prompt release from seizure of the steamship GUL DJEMAL, upon the ground that she is

316 the property of the Turkish or Ottoman Government, and is manned and operated by and in the possession of the Turkish Government.

I also have the honor to suggest that the Attorney General of the United States, or some law officer acting under his direction, be instructed without delay, to make an appropriate suggestion of the fact of the vessel being the property of the Turkish Government and her immunity from seizure, to the United States District Court for the Southern District of New York, to the end that she may be permitted to proceed from New York to Con-
317 stantinople with dispatch. Owing to her seizure and consequent detention, she has been kept lying at Pier No. 45, North River, for upwards of two months, at a great expense to the Turkish Government, due to the loss of beneficial use of the vessel.

Believe me,
My dear Mr. Davis,
Very sincerely yours,
JUAN RIANO.

318

319

SCHEDULE Y.

DEPARTMENT OF STATE

WASHINGTON

FEBRUARY 14, 1921.

My dear Mr. Ambassador:

In acknowledging receipt of your note of January 26, 1921, addressed to Mr. Davis, with reference to the 320
desire of the Turkish Government for the release of the Steamship GUL DJEMAL from seizure by process issued out of the United States District Court for the Southern District of New York, I have to inform you that the Department has given careful consideration to your statement that the GUL DJEMAL is the property of the Turkish Government, and is manned and operated by and in the possession of that Government, and to your suggestion that the Attorney General of the United States, or some law officer under his direction, be instructed to suggest to the court above named that the vessel is the property 321
of the Turkish Government and as such immune from seizure.

The Department has made it a practice carefully to refrain from taking any action which might constitute an interference by the Authorities of this Government in private litigation, even though such litigation may in some way involve merchant vessels owned by a foreign government. I therefore regret to state that the Depart-

322 ment, in the light of the information before it, does not feel that it is in a position to take the action which you suggest.

I am, my dear Senor Riano,

Very sincerely yours,
(signed) NORMAN H. DAVIS

His Excellency
Senor Don Juan Riano y Gayangos,
Ambassador of Spain.

323

324

Supreme Court of the United States

October Term, 1920

No.

Original

In the Matter

of

The Petition of HUSSEIN LUTFI BEY, Master of the Turkish Government steamship "GUL DJEMALE", for Writ of Prohibition and/or a Writ of Mandamus

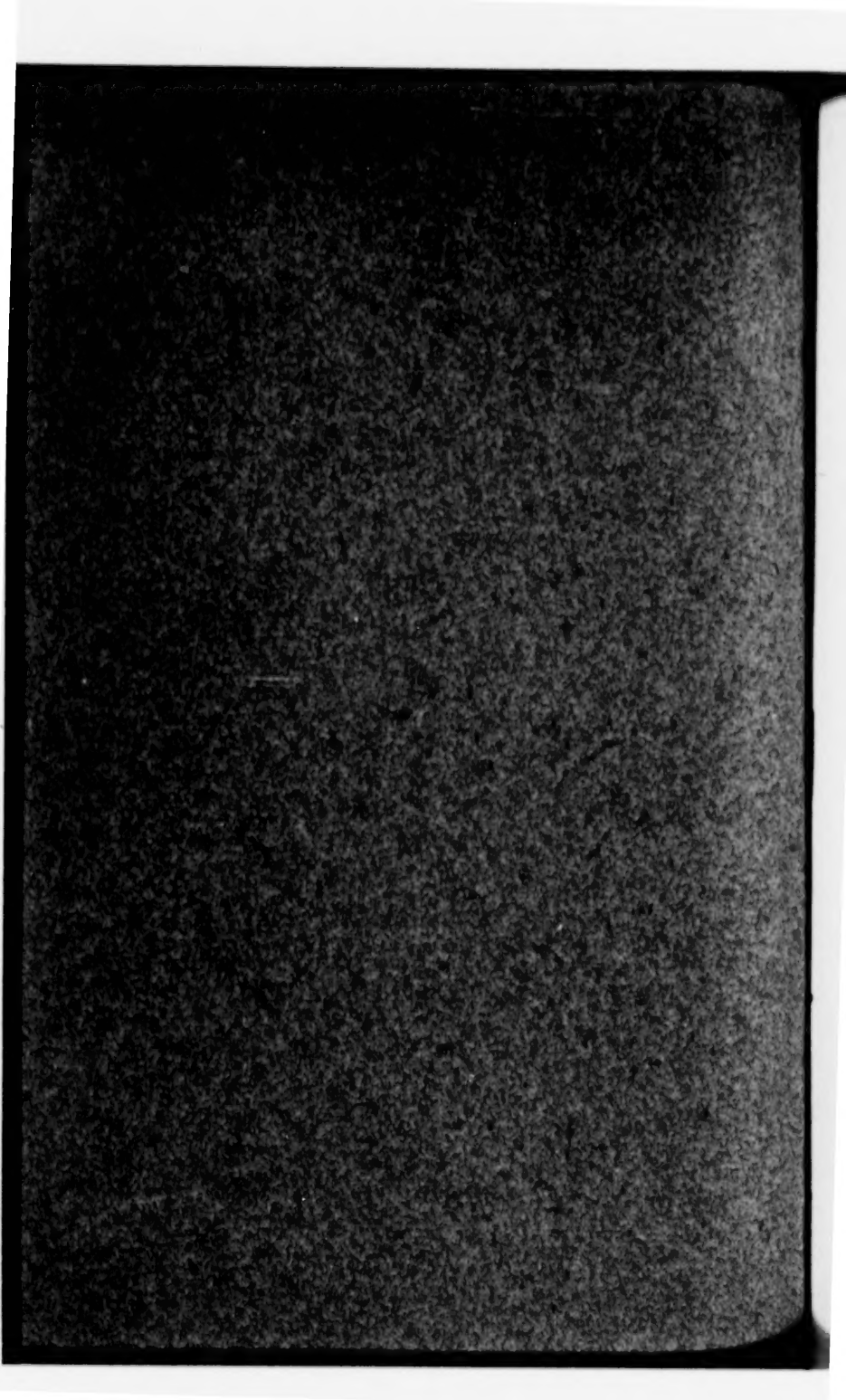
against

The Hon. JOHN C. KNOX, United States District Judge for the Southern District of New York, and the other Judges and officers of the said United States District Court for the Southern District of New York.

MEMORANDUM IN SUPPORT OF MOTION AND PETITION FOR A WRIT OF PROHIBITION AND/OR FOR A WRIT OF MANDAMUS.

WILLIAM A. PURRINGTON,
JOHN M. WOOLSEY,
FRANK J. McCONNELL,
Of Counsel.

[illegible] Printing Co., 264-6 Fulton Street, New York.



SUPREME COURT OF THE UNITED STATES.

IN THE MATTER *of* The Petition of HUSSEIN LUTFI BEY, Master of the Turkish Government steamship *Gul Djemal*, for a Writ of Prohibition and/or a Writ of Mandamus *against* HON. JOHN C. KNOX, United States District Judge for the Southern District of New York, and the other judges and officers of the said United States District Court for the Southern District of New York.	October Term, 1920 No. Original

MEMORANDUM IN SUPPORT OF MOTION FOR PERMISSION TO FILE A PETITION FOR WRIT OF PROHIBITION AND/OR FOR WRIT OF MANDAMUS.

In making this second application for a writ of prohibition and/or for a writ of mandamus against the Honorable John C. Knox by reason of the decision made

by him to hold the Turkish Government steamship *Gul Djemal* under the libels of *Mount Royal Steamship Company, Ltd.*, and other libelants, now pending in the United States District Court for the Southern District of New York, the counsel for the motion and the petitioner desire to call to the Court's attention the fact *that the present motion involves a new procedure and is based on an entirely new set of papers.*

Of necessity the papers which were before the Court on the previous application made January 14, 1921, and denied January 17, 1921, are also printed here in order that the Court may have before them everything relevant to the relief sought.

As the Court will, perhaps, remember, the denial of the previous motion for a writ of prohibition and/or mandamus on behalf of the *Gul Djemal* was made by this Court on January 17, 1921, at which time the Court handed down a decision in the case of *In re Muir, as master of the British steamship Gleneden.*

In the case of *In re Muir* and in the previous application in behalf of the *Gul Djemal,* the interested Ambassadors sought to appear here as *amici curiae,* although the Ambassador had also appeared directly in the Court below, in the case of the *Gul Djemal.*

On the present application, however, the Ambassador is not intervening.

I. THE PROCEDURE FOLLOWED BELOW.

After the refusal of the previous application in the *Gul Djemal* and after the decision of *In re Muir*, a motion was made on behalf of the master of the *Gul Djemal* for leave to file a special claim to the vessel, accompanied by a special plea in abatement and an exception to the issuance of the writ against the steamer.

An order was entered by Judge Knox granting this motion, and the special claim, the plea in abatement, the exception and the order allowing it to be filed, are annexed to this petition, marked Schedules "S" and "T" thereof.

By the provisions of Judge Knox's order, Schedule "T," seven days were allowed within which the libelant could except, demur or otherwise plead to the special plea in abatement.

The libelant elected to file an exception—*i.e.*, a demurrer—to the special plea in abatement. This exception is annexed to this petition as Schedule "U" thereof.

A *formal motion* was made on behalf of the master of the *Gul Djemal*, based on the said special plea in abatement and the exception filed thereto by the libelant, *for the release of the vessel.*

On February 10th argument on this motion was had and the motion was denied by Judge Knox, who stated that he would adhere to his previous ruling, *i.e.*, that breach of diplomatic relations cut off rights to immunity.

The formal decision is embodied in the order entered February 17, 1921, which is marked Schedule "W."

Thus there is now raised by the proceedings in the District Court, which were wholly regular in their nature, a clean cut question of law as to whether the fact that the *Gul Djemal* was, and is, owned by, and in the possession of the Turkish Government, which is at peace with the United States, should not entitle her to the usual immunity of a vessel in such a position, in spite of the fact that the Turkish Government has broken off diplomatic relations with the United States Government.

The position that Judge Knox has taken, as shown by his two opinions, and as stated orally by him on the argument of the motion to release the vessel made February 10th, 1921, *is that between peace and war there is a twilight zone, indicated by a breach of diplomatic relations, and that such a breach of diplomatic relations, although the Nations involved are still at peace, cuts off certain rights and privileges, which would exist if such a breach of diplomatic relations had not occurred. Opinions, Schedules "M" and "Q", pages 65, 81.*

Neither Judge Knox nor counsel on either side have been able to find any judicial authority for this position, either in the decisions of this Court or in any other Court. The question, therefore, is raised in a clean cut manner in the present application by the master of the vessel who is the regular representative of the vessel and the owner and is now up for the first time in this Court.

II. THE SOLE QUESTION INVOLVED, THEREFORE, IS WHAT EFFECT, IF ANY, A BREACH OF DIPLOMATIC RELATIONS HAS ON THE PROPERTY RIGHTS AND IMMUNITIES OF THE RESPECTIVE GOVERNMENTS INVOLVED.

It would seem to be quite clear that, if the *Gul Djemal* were a Turkish war vessel, she could not be considered subject to the jurisdiction of our Courts, irrespective of the breach of diplomatic relations.

It is contended on behalf of the *Gul Djemal* that, although she is used as a merchant vessel, the fact that she is owned by, and in the possession of, and operated by the Turkish Government, makes her a public vessel so far as the jurisdiction of our Courts are concerned, just as if she were a war vessel.

Indeed, it appears to counsel for the *Gul Djemal* a dangerous doctrine to hold that a breach of diplomatic relations wipes out the rights of the other Government involved, so that the Courts do not have to observe and recognize the ordinary international immunities and privileges.

Such a state of affairs as a breach of diplomatic relations ought, in fact, to require that the Court should act with more than usual circumspection, in order to avoid precipitating Nations which have broken off diplomatic relations, into actual warfare, as might well be the case, when relations are strained, if the Courts of one Nation should, in contravention of the usual rules of international courtesy, seize vessels of the other Government, which happens to be in its ports. Such an act might very

well be considered as *casus belli* by a Nation which was strong enough to take objection.

On principle the petitioner has, it is submitted, the right of the controversy.

III. Owing to the State Department's attitude no other procedure was possible than that which was followed below.

The practice here was quite regular—a special claim and plea in abatement by the master as bailee and custodian of the vessel.

The alternative suggestion made by this Court in the case of *In re Muir* as to a method of procedure by which the State Department might intervene in cases where immunity was claimed, is shown to be impossible in this case.

On January 25th, 1921, the Spanish Ambassador, representing Turkish interests, referring to previous correspondence between himself and the State Department, wrote to the State Department, assuring them on behalf of his Government that the steamship *Gul Djemal* was the property of the Turkish Government, and stating that he was requested to do everything possible to obtain her release from her present arrest, on the ground that she was the property of the Turkish Government and manned, operated by and in the possession of the Turkish Government.

The Ambassador suggested that the Attorney General of the United States, or some other officer acting under his direction, on instruction by the State Department, should make an appropriate suggestion of the fact that the vessel was the property of the Turkish Government, and that she was immune from seizure in the United States District Courts, in order that she might be allowed to proceed from New York to Constantinople with despatch.

The Ambassador also pointed out the fact that, owing to her seizure and detention, the *Gul Djemal* had been lying for upwards of three months in the North River at a great expense to the Turkish Government. *Letter from the Spanish Ambassador to the State Department, marked Schedule "X".*

In answer to that letter, the Acting Secretary of State wrote, under date of February 14th, refusing to accede to the Ambassador's request, *not on the ground that there had been a breach of diplomatic relations between Turkey and the United States, but solely on the ground of a departmental practice.*

The Acting Secretary of State said—

> "The Department has made it a practice carefully to refrain from taking any action which might constitute an interference by the authorities of this Government in private litigation, even though such litigation may in some way involve merchant vessels owned by a foreign Government." *Letter from the Department of State to the Spanish Ambassador, February 14, 1921, marked Schedule "Y."*

These letters are printed in this application for two reasons:

1. That this Court might have before it all the correspondence relevant to the application which the petitioner is hereby making, and

2. That this Court might realize that foreign Governments cannot protect their property if they are forced to depend upon our Department of State for assistance to that end.

The only two occasions, since the beginning of the European war, so far as counsel is aware, in which the State Department has ever intervened in any way are the cases of *The Luigi*, 230 Fed. 493 and *The Attualita*, 238 Fed. 909.

In both of those cases the intervention was, as shown by the reports, purely colorless without any request that immunity be granted and, consequently, did not take the parties any further than they would have been without any State Department intervention.

In *The Attualita*, the vessel was held to be not immune and since that time the State Department has avoided any intervention of any kind.

IV. The attitude of the State Department cannot cut off the rights or immunities of another sovereign.

But the attitude of the State Department, *although it may preclude a certain form of procedure*, cannot cut

off the rights of a foreign Government or the immunities of a foreign Government, if the foreign Government wishes to contend for such rights and immunities.

Such rights and immunities can only be cut off by a treaty with the other Nation, by which it is agreed that the immunity shall not exist, or in the case of vessels by an Act of Congress providing that any foreign Government-owned vessels entering our ports for commercial purposes will be deemed in all respects to have the status of privately owned vessels and be subject to all the liabilities of privately owned vessels.

Congress can, of course, exclude foreign vessels from our ports if it wishes to do so and can determine the terms on which they shall come in.

> *Patterson* v. *The Bark Euroda*, 190 U. S. 169.
> Cf. *The Exchange*, 7 Cranch 116, 149.

But until such legislation is passed, the well settled rules of international law prevail because, as Chief Justice Marshall said in *The Exchange*, 7 Cranch 116, the case which is the commencement of all the jurisprudence on this subject, at page 147 (italics ours):

> "It seems, then, to the court, to be a principle of public law, that national ships of war, entering the port of a friendly power open for their reception, are to be considered as exempted by the consent of that power from its jurisdiction.
>
> "Without doubt the sovereign of the place is capable of destroying this implication. He may claim and exercise jurisdiction either by employ-

ing force, or by subjecting such vessels to the ordinary tribunals. *But until such power be exerted in a manner not to be misunderstood, the sovereign cannot be considered as having imparted to the ordinary tribunals a jurisdiction, which it would be a breach of faith to exercise. Those general statutory provisions therefore which are descriptive of the ordinary jurisdiction of the judicial tribunals,* which give an individual whose property has been wrested from him, a right to claim that property in the courts of the country in which it is found, *ought not, in the opinion of this court, to be so construed as to give them jurisdiction in a case, in which the sovereign power has impliedly consented to waive its jurisdiction.*"

Thus until the rules are changed by competent authority, there is a kind of international estoppel which prevents our courts from exercising jurisdiction over vessels owned by foreign governments.

V. VARIOUS REASONS WHY A RULE SHOULD BE GRANTED HEREIN.

The petitioner prays that the Court will grant a rule in this case in order that full argument may be had on the important question of law involved, and in order that it may be judicially determined what, if any, effect a breach of diplomatic relations has on the immunity of the governmental property of the other Government involved in the breach.

The situation is a most serious one from the point of view of the Turkish Government and the steamship *Gul*

Djemal because the Turkish Government is under and has been under the very heavy expense of maintaining a crew of upwards of two hundred men on the vessel during all these months of detention and is prevented from the beneficial use of the vessel in earning freight. The value of the vessel for the purpose of earning freight is probably upwards of $1200 a day.

There is another serious consideration.

If the vessel should be held liable under the libel and should have to be put up for sale by the United States Marshal, it is very questionable whether the United States Marshal properly could sell the property of a foreign sovereign, and if he did so, whether the foreign sovereign would be bound by the sale. The foreign sovereign could undoubtedly challenge the title of the purchaser, whenever the vessel got beyond the three-mile limit.

Supposing for example, that the *Gul Djemal*, after she had been purchased at a Marshal's sale, should in the course of her voyagings return to Turkey, it is perfectly clear that the Turkish Government would not recognize the title of the new purchaser and would probably retake the vessel on the ground that it was Turkish Government property which had been improperly disposed of by our Courts.

It is quite true that conceivably Turkey is not in a naval position at the present time to retake the vessel if she was sold by our Courts, but *that does not affect the principle* and if a vessel owned by the British Govern-

ment, or by the Italian Government or by the French Government, were so sold against their protests, undoubtedly those countries would use their naval vessels to retake their property so soon as it left our jurisdiction.

The situation should be approached and considered from the same point of view as if the most favored nation were involved.

The whole matter is so fraught with complications and difficulties and the whole principle, contended for by the libelant and by Judge Knox, is so full of the possibility of serious trouble, if it should be applied in the case of any other than a weak Nation, that counsel for the petitioner earnestly contend that this Court should grant a rule and decide the question on this petition so that it will be finally established,

First, whether a foreign Government owned vessel, though commercially used, is immune from the process of our Courts, until Congress shall have otherwise enacted, and,

Second, whether so long as countries remain at peace, under the present rules of international law, commercial vessels, owned by and in the possession of the respective Governments, are immune from process in each other's Courts, although a breach of diplomatic relations may have occurred.

VI. THERE IS NOT ANY OTHER AVAILABLE REMEDY THAN THAT NOW SOUGHT FROM THIS COURT.

The order of Judge Knox sustaining the exceptions to the plea in abatement and overruling the plea is not a final order and, hence, is not appealable to the Circuit Court of Appeals.

Montgomery v. *Anderson*, 21 How. 386.
Cushing v. *Laird*, 107 U. S. 69.
McLish v. *Roff*, 141 U. S. 661.
Bender v. *Penn. Co.*, 148 U. S. 502.
Hohorst v. *Hamburg American Packet Co.*, 148 U. S. 262.

If it had been a final order it would not have been directly appealable to this Court under Section 238 of the Judicial Code because it does not involve the question *of the jurisdiction of the Court as a Federal Court* because the Court has jurisdiction of the subject matter of the suit.

The only question is the jurisdiction of any Court over the steamship *Gul Djemal* in her present status, and that is a question of liability and not jurisdiction. *The Attualita*, 238 Fed. 909.

It is only questions of the jurisdiction of the Court as a Federal Court that are directly appealable under Section 238.

Louisville Trust Co. v. *Knott*, 191 U. S. 225, 230.
United States v. *Congress Construction Co.*, 222 U. S. 199.
Male v. *Atchison, etc.*, 240 U. S. 97.

It is not possible to apply for a writ of prohibition to the United States Circuit Court of Appeals for the Second Circuit because the Circuit Courts of Appeal are without jurisdiction to issue any great writs except in aid of their appellate jurisdiction.

Muir, as Master of the Gleneden, v. *Chatfield,* 255 Fed. 24 (1918, C. C. A. Second Circuit).

It is not possible to try a case of this kind and at the same time maintain the immunity which it is necessary to maintain in order to preserve the rights of the sovereign. A case cannot be tried without submitting to the jurisdiction of the Court.

The filing of a bond would at once waive immunity.

The Luigi, 230 Fed. 493.

For it is only a sovereign or his representative that can claim sovereign immunity.

The Crimdon, 35 T. L. R. 81, 82.

The relief herein prayed for is, therefore, it is submitted, appropriate and is apparently the only relief procurable.

There is ample precedent for the granting of a writ of prohibition in a case of this kind.

Smith v. *Whitney,* 116 U. S. 167, 173.
In re Rice, 155 U. S. 396, 402.
In re New York, etc. S. S. Co., 155 U. S. 523, 531.

The first reported instance of a writ of prohibition in this Court is, we believe, the case of *United States* v.

Peters, 3 Dallas, 121 (1795), in which the question raised was a question of immunity of an arrested corvette, *The Cassius*, belonging to the French Republic and in which the writ of prohibition was granted.

To the same effect in principle are:

In re Baiz, 135 U. S. 403.
In re Cooper, 138 U. S. 404.
In re Cooper, 143 U. S. 472.
Ex parte Indiana Transportation Co., 244 U. S. 456.

In *In re Cooper*, 143 U. S. 472, Mr. Chief Justice Fuller said, at page 495 (italics ours):

> "The writ thus provided for by section 688 is the common law writ, which lies to a court of admiralty only when that court is acting in excess of, or is taking cognizance of matters not arising within its jurisdiction. *Its office is to prevent an unlawful assumption of jurisdiction,* and not to correct mere errors and irregularities.*"

In *Ex parte Easton*, 95 U. S. 68, 77, Mr. Justice Clifford recognized, in his opinion, the propriety of issuing a writ of prohibition to restrain an abuse of power by an inferior Court, but said at page 77 (italics ours):

> "Application for the writ of prohibition is properly made in such a case, upon the ground that the District Court has transcended its jurisdiction in entertaining the described proceeding * * * Such a writ is issued to forbid a subordinate court to proceed in a cause there depending, *on sugges-*

* It should be noted that this is jurisdiction generally, not merely jurisdiction as a Federal Court

tion that the cognizance thereof belongeth not to the court. F. N. B. 39; 3 Bl. Com. 112; 2 Pars. Ship. 193; 8 Bac. Abr. 206."

What is now sought to be done by Judge Knox is, against the principles of international law, to assume jurisdiction over a Turkish Government vessel in a cause the cognizance whereof, because of such government ownership, belongeth not to his Court.

LAST POINT.

THE RULE PRAYED FOR SHOULD BE GRANTED.

Respectfully submitted,

WILLIAM A. PURRINGTON,
JOHN M. WOOLSEY,
FRANK J. MCCONNELL,
of Counsel.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1930.

No. Original

Ex parte

EXPORTERS OF MANUFACTURERS' PRODUCTS, INC.,

Petitioner.

ON PETITION FOR WRIT OF MANDAMUS AND/OR WRIT OF PROHIBITION, TO THE CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

MOTION FOR LEAVE TO FILE PETITION; PETITION AND AFFIDAVITS.

HENRY M. WARD,
Counsel,
522 Fifth Avenue,
New York City.

The Home Press, 37 Warren St., N. Y. Tel. Barclay 0328.

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the Southern District of New York, in which cause your petitioner is the plaintiff-in-error, and that said court may be prohibited and restrained from entering, making or enforcing any order striking out the bill of exceptions filed in said cause and for such other or further alternative or additional writ, order or relief as your petitioner may be entitled to in the premises.

The facts upon which the petitioner asserts its rights to the relief sought are set forth in the petition and supporting affidavits herewith submitted.

The petitioner further prays, if leave to file the petition be granted, that a rule be entered and issued directing the Judges of said Circuit Court of Appeals to show cause before this Court why a writ or writs should not issue in accordance with the prayer of the petition and that all proceedings in said Circuit Court of Appeals be stayed pending the hearing and determination of this application.

HENRY M. WARD,
Counsel for Petitioner,
522 Fifth Avenue,
New York City.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1920.

No. Original

Ex parte

EXPORTERS OF MANUFACTURERS' PRODUCTS, INC.,

Petitioner.

On petition for writ of mandamus, and/or writ of prohibition, to the Circuit Court of Appeals for the Second Circuit.

PETITION.

To the Honorable the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Exporters of Manufacturers' Products, Inc., for its petition, respectfully shows:

I. That your petitioner is a corporation organized under the Laws of the State of New York, having its principal office and place of business within the Southern District of New York.

II. That in the month of January, 1918, your petitioner as plaintiff brought an action at law in the District Court of the United States for the Southern District of New York to recover damages for breach of contract against Butterworth Judson Company, a corporation organized under the Laws

of New Jersey. As appears from the amended pleadings in said action, the plaintiff sues upon a written contract to recover a broker's commission of five cents a pound on some 60,000,000 pounds of picric acid sold by defendant to the Government of France through said government's purchasing agents.

III. That said action came on for trial before the Honorable William B. Sheppard and a jury on October 6th, 1919, and subsequent days; after several adjournments the trial was completed on October 31, 1919, when the court submitted the case to the jury and the jury found a general verdict for the defendant and plaintiff's motion for a new trial was denied. Judgment of dismissal on the merits was entered November 26th, 1919.

IV. That the Honorable William B. Sheppard, who presided at said trial, is the District Judge for the Northern District of Florida, and was holding court in New York by assignment. A few days after the trial he returned to Florida and remained there until after the settlement of the bill of exceptions as herein stated.

V. That your petitioner was advised by its attorney and counsel, Harford T. Marshall, Esq., that reversible error had been committed by the trial judge, both in his rulings upon the admission and rejection of evidence, and in his charge, to all of which rulings exception had been duly taken, and your petitioner thereupon decided to seek a review of such errors in the Circuit Court of Appeals for

the Second Circuit and instructed counsel to sue out a writ of error accordingly.

VI. That under Rule 5 of said District Court as amended on May 8, 1917, it is provided:

> "For the purpose of taking any action which must be taken during the term of court at which final judgment or decree is entered such term of court is extended for ninety days from the date of entry of the final judgment or decree."

VII. That your petitioner, through its counsel, thereupon ordered the transcript of all the proceedings of the trial from the official stenographer. That the same was 860 pages in length, in addition to which were some 29 documentary exhibits offered by plaintiff, covering 98 pages of the printed record, and some 28 documentary exhibits offered by defendant, covering some 88 pages of the record. That in the meantime plaintiff's counsel, Harford T. Marshall, was constantly occupied with professional engagements and unable to give the time required to make a trip to Florida to procure the settlement of the bill of exceptions by Judge Sheppard.

VIII. That your petitioner's said counsel during the period from November 26th, 1919, the date of the entry of judgment, to February 24th, 1920, the date of the expiration of the 90 days' extension of term by Rule 5 of the District Court Rules, informed the attorneys for the defendant, Messrs. Chadbourne, Babbit & Wallace, of 14 Wall Street, New York City, that he intended to sue out a writ of error from the said Circuit Court of Appeals

to review the said judgment; that he was in course of preparing the bill of exceptions, but that he would be unable, owing to the causes of delay above set forth, to have the same completed and ready for settlement within 90 days from the date of judgment and said attorneys prior to the 24th day of February, 1920, agreed orally to extend by stipulation the said period of 90 days mentioned in Rule 5 of said District Court above referred to.

IX. That your petitioner's said counsel, as more fully appears from the affidavits herewith submitted, instructed his clerk to have a written stipulation prepared and signed accordingly, but that said clerk overlooked the same and did not present such stipulation to defendant's attorneys for signature until after the expiration of said period of 90 days, to wit, on March 1st, 1920, on which day a stipulation was presented to said defendant's attorneys, who retained said stipulation over night, amended and rewrote the same, and on March 2nd, 1920, signed the stipulation so amended and delivered the same to said clerk.

X. That said stipulation reads as follows:

> "IT IS HEREBY STIPULATED AND AGREED by and between the parties hereto that the November Term of the United States District Court for the Southern District of New York be extended to April 6th, 1920, for the purpose of settling and filing the Bill of Exceptions herein. The defendant, however, reserves the right to object, as not noted in time, to any exceptions not noted by the plaintiff within the time specified by stipulation between the

parties entered into upon the trial of this action.

Dated, New York, March 1, 1920.

HARFORD T. MARSHALL,
Attorney for Plaintiff.

CHADBOURNE, BABBIT & WALLACE,
Attorneys for Defendant."

XI. That, as your petitioner is informed by his attorney, during the month of February, 1920, petitioner's said counsel had in mind the rule as set forth by the Circuit Court of Appeals for the Second Circuit upon the technical point of practice involved in its opinion in the case of Blisse v. United States, 263 Fed., 961, January 14th, 1920, in which it is stated at page 966:

> "We see no sufficient reason to hold that the bill cannot be signed by the judge after the term has expired, provided the parties consent, and that such consent may be given after the term has expired,"

and, therefore, in reliance upon the oral agreement *made before the expiration of said period of 90 days* to extend the time, did not regard it as in any way material whether the written evidence of such agreement, to wit, the stipulation above referred to, was actually signed before or after February 24th.

XII. That on the same day, to wit, March 2nd, 1920, an order upon said stipulation was made

by District Judge Mayer extending the November term of said court for the purpose of settling and filing the bill of exceptions to and including April 6th, 1920, and duly filed in the office of the clerk of the said District Court, a copy of which is hereto annexed and marked Exhibit A. The defendant did not at any time move to vacate or otherwise affect said order of March 2nd, but, on the contrary, during the month of March, 1920, its attorneys were in correspondence with the plaintiff's attorney in relation to the bill of exceptions, as more fully appears from the affidavits herewith submitted.

XIII. That thereafter, and on April 6th, 1920, Judge Mayer, under an order to show cause dated April 5th, further, by order of April 6th, extended the term for the purpose of settling the bill of exceptions to May 3rd, 1920, but entertained an application made by the defendant's attorneys (purporting to appear specially for that purpose) to vacate the order of April 6th, and, after hearing counsel, sustained the said order of April 6th in an opinion, a true copy of which is hereto annexed and marked Exhibit B.

XIV. That on April 30th, 1920, a further order was made by District Judge Mayer upon notice to the defendant (its counsel again purporting to appear specially for the purpose of opposing the application) further extending the term for the purpose of settling the bill of exceptions to May 25th, 1920.

XV. That petitioner and his attorney, in reliance upon defendant's stipulations, oral and writ-

ten, as aforesaid, and in reliance upon the said order of March 2nd, incurred large obligations and petitioner paid out considerable sums of money in preparing the assignment of errors and bill of exceptions, and that at least $1628.31 of such expenses have been incurred and paid in reliance upon the validity of the said stipulation and of the said order of March 2nd, 1920.

XVI. That on May 11th, 1920, petitioner's bill of exceptions was settled by District Judge Sheppard at Pensacola, Florida, and on May 24th, 1920, the writ of error was allowed by District Judge Knox, the assignment of errors, bill of exceptions and bond were duly filed and the citation issued, all in accordance with the usual practice, and thereafter the transcript of record was duly certified by the Clerk of the District Court on July 23rd, 1920, and thereafter duly filed in the Circuit Court of Appeals. The transcript was thereupon printed under the direction of the Clerk of the Circuit Court of Appeals. Said transcript is 1168 pages in length. The total expenses incurred and paid by petitioner, inclusive of those specified in paragraph XV above in connection with the said writ of error, with travelling expenses to and from Pensacola, and in printing the record, amount to $2078.31, all of which expenses were incurred in reliance upon what petitioner's counsel regarded as a well settled rule of practice and in reliance upon the stipulation and order aforesaid.

XVII. That after said cause had been docketed in the Circuit Court of Appeals, and on March 7th, 1921, the defendant made a motion in the Circuit Court of Appeals on an affidavit for an or-

der to strike from the record the bill of exceptions and to dismiss and quash the writ of error. Said motion was opposed by your petitioner through its counsel, was argued and submitted, and on March 12th, 1921, the Circuit Court of Appeals handed down an opinion, a true copy of which is hereto annexed and marked Exhibit C, wherein it was held that, for the reasons therein set forth, the motion to strike the bill of exceptions from the record should be granted and the motion to dismiss and quash the writ of error denied. No order has been entered in the Circuit Court of Appeals upon said decision and the cause is still upon the docket of said Court and has not yet been argued or otherwise disposed of.

XVIII. Your petitioner further shows that, as advised by counsel, the assignments of error in said cause cannot be presented to said Circuit Court of Appeals and passed upon, save by means of the bill of exceptions, that no reversible error is raised or presented by the writ of error and proceedings had thereon, save by and through the bill of exceptions, and that, in spite of the errors of law of the trial court as assigned, the Circuit Court of Appeals, under the decisions of this court and of the Circuit Courts of Appeals, has no power to review or pass upon such errors without the bill of exceptions.

XX. Your petition further shows that, as petitioner is advised by counsel, if an order were entered by the Circuit Court of Appeals striking out the bill of exceptions, such order would not be subject to review by this court as a matter of right, and your petitioner would be wholly without rem-

edy in the premises and deprived of its day in court, and while the Circuit Court of Appeals might certify questions of law to this court for decision, and thereby request the instructions of this court upon the point of practice involved, yet the granting of that form of relief is wholly discretionary with that court, and cannot be controlled by this court; that, while, after final judgment of affirmance in the Circuit Court of Appeals, this court would have the power to review all the questions of law upon the grant of a writ of certiorari, yet that remedy is discretionary, and it is doubtful if your petitioner could present any of the grounds for granting a writ of certiorari within the rules and principles stated by this court in that behalf; furthermore, that a writ of certiorari from this court to review the final judgment of affirmance would require the whole voluminous record to be brought to this court and require great expense in printing the record; furthermore, that it is doubtful, even if this court should grant a writ of certiorari to review the final judgment, whether any other question would be presented than that involved in this petition, for the reason that in that event the Circuit Court of Appeals would not have passed upon any of the assigned errors of the District Court.

XXI. Your petitioner therefore submits, as advised by counsel, that your petitioner is without remedy in the premises save by virtue of the grant of a writ of mandamus from this court to the Circuit Court of Appeals for the Second Circuit, commanding it to hear your petitioner's cause upon the bill of exceptions and, in the alternative, a writ of prohibition prohibiting the Circuit Court of Appeals from striking your petitioner's bill of excep-

tions from the record, for which writ or writs, and for such other writ or order or relief as your petitioner may be entitled to in the premises, your petitioner prays and further prays for a rule or order staying the proceedings in said Circuit Court of Appeals pending the hearing and determination of this application.

EXPORTERS OF MANUFACTURERS' PRODUCTS, INC.,

By Henry M. Ward,
Its counsel,
522 Fifth Avenue,
New York City.

I hereby certify that in my opinion the foregoing petition is well founded.

HENRY M. WARD,
Counsel for Petitioner.

Exhibit A.

At a stated Term of the United States District Court for the Southern District of New York held at the United States Court House and Post Office Building in the Borough of Manhattan, City of New York on the 2nd day of March, 1920.

Present:
Honorable JULIUS M. MAYER,
District Judge.

EXPORTERS OF MANUFACTURERS' PRODUCTS, INC.,
Plaintiff,
against
BUTTERWORTH-JUDSON COMPANY,
Defendant.
L 18-79.

UPON READING AND FILING the annexed stipulation, dated March 1, 1920, it is

ORDERED that the November Term of this Court, for the purpose of settling and filing the Bill of Exceptions herein, be and the same hereby is extended up to and including April 6th, 1920.

J. M. MAYER,
U. S. D. J.

Exhibit B.

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

EXPORTERS OF MANUFACTURERS' PRODUCTS, INC.,
Plaintiff,

against

BUTTERWORTH JUDSON COMPANY,
Defendant.

MAYER, *District Judge*.

(1) By an order of this court dated March 2, 1920 it was—

> "Ordered that the November Term of this court, for the purpose of settling and filing the bill of exceptions herein, be and the same hereby is extended up to and including April 6th, 1920."

The present motion is to extend the November Term to May 3, 1920. The action is at law and the judgment was filed November 26, 1919. Under Rule 5 of this court the term expired February 24, 1920. On March 1, 1920 the attorneys for the parties stipulated as follows:

> "IT IS HEREBY STIPULATED AND AGREED by and between the parties hereto that the November Term of the United States District Court for the Southern District of New York be extended

> to April 6th, 1920 for the purpose of settling and filing the bill of exceptions herein. The defendant, however, reserves the right to object, as not noted in time, to any exception not noted by the plaintiff within the time specified by stipulation between the parties entered into upon the trial of this action."

On the foregoing stipulation, the order supra was made. It is agreed that the reservation in the stipulation has nothing to do with this application. It refers, as stated, to the record upon the trial, and the stipulation entered into upon the trial.

In order that the action of the defendant's attorneys in opposing the motion may be understood, it is fair to state that they reserved the point as to lack of jurisdiction which they are now urging. Mr. Buckley's affidavit sets forth the following (the clerk referred to being Mr. Marshall's clerk):

> "That the attention of the clerk offering said stipulation was called to the fact that the November Term of said court had expired, and that the stipulation, if executed by the attorneys for the defendant could have no effect. The clerk thereupon stated that this stipulation was the only way that he knew to extend the November Term of the court, and that he believed it was the proper practice to pursue. That it was thereafter determined to sign it upon his insistence, although this office took the position that it was of no effect."

The sole question, therefore, is this: Whether the court has power to make an order extending the

term of the court for the purpose of settling and filing a bill of exceptions after the term has expired, and where there is a stipulation consenting to the extension of the term for that purpose, signed by the attorneys for the parties after the term has expired.

The latest discussion in this circuit of an extension of the term question is found in Blisse v. United States, 263 Fed. 961—C. C. A.—decided January 14, 1920. Many cases are there referred to and construed. In addition reference is made by me to Oxford v. Coast Line R. Co. v. Union Bank of Richmond, Va., 153 Fed. 723, 82 C. C. A. 609; Talbot v. Press Pub. Co. (C. C.) 80 Fed. 567; Susquehanna Coal Co. v. Casualty Company of America (D. C.) 247 Fed. 137; Western Dredging & Improvement Co. v. Heldmaier, 116 Fed. 79, 53 C. C. A. 664. United States v. Mayer, 235 U. S. 55, 35 Sup. Ct. 16, 59 L. Ed. 129, which I have carefully read again since the argument, seems to be confined to motions or proceedings designed to set aside or nullify a judgment on grounds having no relation to a bill of exceptions.

I must assume (especially because of the citation in the Blisse case, of E. I. Du Pont de Nemours Co. v. Smith, 249 Fed. 403, 161 C. C. A. 377) that our Circuit Court had all relevant cases in mind when it decided the Blisse Case. Judge Rogers in that case, reading for the court states:

> "We see no sufficient reason to hold that a bill cannot be signed by a judge after the term has expired, provided the parties consent and that *such consent may be given even after the term has expired.*" (Italics mine.)

(2) This is a definite and unequivocal statement of a rule. It is contended that the part italicized is dictum; but it must be remembered that, when dealing with questions of practice, as distinguished from questions of substantive law, appellate courts not infrequently take the opportunity of stating a rule for the guidance of courts of first instance and of the bar. The question under consideration is thus precisely covered by the opinion in the Blisse case, and the order made by me on April 6th, 1920 will stand.

Motion granted.

Exhibit C.

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT.

Before:

Hon. HENRY GALBRAITH WARD
Hon. CHARLES MERRILL HOUGH
Hon. MARTIN T. MANTON
Circuit Judges.

EXPORTERS OF MANUFACTURERS' PRODUCTS, INC.,
Plaintiff-in-Error,

against

BUTTERWORTH-JUDSON COMPANY,
Defendant-in-Error.

Motions by defendant-in-error for an order (a) striking from the record the bill of exceptions herein, and (b) dismissing and quashing the writ of error.

In an action at law in the District Court for the Southern District of New York, Butterworth Company recovered verdict and judgment against plaintiff-in-error. Thereupon this writ was taken.

The Stated Terms of the trial court begin each month on the first Tuesday thereof (Jud. Code 97), but by a general rule of that court it is provided that

> "For the purpose of taking any action which must *be taken within the term* of the court at which final judgment or decree is entered, each term of court is extended for ninety days from the date of entry of final judgment or decree."

In respect of this case the ninety day period above provided for, and therefore the term at which final judgment was entered, expired on 24th February, 1920.

On March 1, 1920 the following stipulation was executed between the attorneys for the parties hereto:

> "It is hereby stipulated and agreed by and between the parties hereto that the November Term of the United States District Court for the Southern District of New York be extended to April 6, 1920 for the purpose of settling and filing the bill of exceptions herein."

At the time of signing the above agreement the attorney for defendant-in-error stated to his opponent his opinion that since the term had expired the stipulation "could have no effect."

Before April 6th plaintiff-in-error proposed the bill of exceptions as to which this motion is made. Thereupon the trial judge, over the objection of defendant-in-error and on the faith of the stipulation above quoted, settled and signed the bill of exceptions. The record, including such bill of exceptions, was then filed in this Court and defendant-in-error made this motion.

CHADBOURNE, BABBITT & WALLACE, ROGER B. HULL, of counsel, for defendant-in-error and motion; HARFORD T. MARSHALL, opposed.

HOUGH, *C. J.*

The unusual facts above recited and a decision of the Supreme Court (*O'Connell* v. *United States*, 253 U. S. 142) rendered 17th May, 1920, and therefore after the action of the Court below, compel some review and revision of our judgments on the subject of settlement of bills of exceptions.

The undoubted general rule that a bill of exception must be settled within the term at which the judgment is entered, or within such further time, *i. e.*, extension of term, as may be allowed by order entered before that term's expiration, we stated in *Koewing* v. *Wilder*, 126 Fed., 472, and repeated it in respect of an effort to file a bill *nunc pro tunc* in *Reader* v. *Haggin*, 160 Fed., 909. But the right was reserved of allowing or approving the settlement of a bill after term's expiration under "very extraordinary circumstances" (*United, etc. Co.* v. *Stimson*, 175 Fed., 1023; *Glickstein* v. *United States*, 215 Fed., 90). We have also insisted that where such settlement was made after the end of the term the reason or justification for so doing should affirmatively appear by an express statement thereof (*Ulmer* v. *United States*, 266 Fed., at 181).

Under the extraordinary circumstances which withdrew a given case from the operation of the rule, we have included the illness of the trial Judge (*Roberts* v. *Bennett*, 135 Fed., 748), which of course is a disability within Rev. Stat., Sec. 953 as amended (*Schmidt* v. *Standard etc. Co.*, 202 Fed., 1023), though mere absence from the district is not such disability (*Ulmer* v. *United States, supra*).

Recognition has always been given to the ruling in *Waldron* v. *Waldron*, 156 U. S., 361, that a bill may be settled after the term by virtue of a consent or agreement of parties made during the term; but though no express ruling on the point has ever been made in a reported opinion by this Court, examination of the files will show cases evidencing only consents made after expiration of term and all duly made extensions thereof. And the effect of that practice is reflected in the remark (not necessary for determination of the cause in hand) in *Blisse* v. *United States*, 263 Fed., at 966, viz.: "We see no sufficient reason to hold that the bill cannot be signed by the Judge after the term has expired provided the parties consent and that such consent may be given even after term has expired."

That motions affecting the judgment, such as an application for a new trial, could not even on consent be entertained after the end of the term is a rule plainly enforced in *United States* v. *Mayer*, 235 U. S., 55, because the question is not one of procedure but of power or jurisdiction, and consent cannot give jurisdiction. The settlement of a bill of exceptions, however, has been practically regarded rather as a matter of procedure than otherwise, and therefore within very wide limits subject to the consent or agreement of counsel.

In view, however, of the O'Connell case, *supra*, and of the recent consideration thereof in *Anderson* v. *United States*, 269 Fed., 65 (70), we are constrained to the holding that the settlement of a bill of exceptions is a jurisdictional matter over which neither Courts nor parties have any power or control after the end of the term as lawfully extended either by consent given or order entered before such termination as extended.

It follows that the language quoted from the Blisse case *supra* is erroneous and that of such cases as *DuPont* v. *Smith*, 219 Fed., at 605, must be understood with the limitation that the consent of parties rises no higher, or can effect no other purpose than that of an order extending the term entered before the term's end.

We therefore grant so much of the motion as strikes from the record the bill of exceptions; holding (to quote from the O'Connell case) that the "proceedings concerning settlement of a bill are *coram non judice*." It may be noted that the expression of opinion by counsel on signing stipulation is immaterial.

This may render the present writ hopeless, yet does not technically require granting the second motion. We have pointed out in *Fraud* v. *Empire, etc., Co.*, 259 Fed., 618, that a writ of error is usually accompanied both by a judgment roll and a bill of exceptions. Under the writ we may examine the judgment roll to ascertain its regularity (*Goldfarb* v. *Keener*, 263 Fed., 357); but only through the bill of exceptions can we examine the occurrences at trial (*Bucsel* v. *United States*, 258 Fed., at 816).

As by this motion we are not called upon to investigate the judgment roll, the application to dismiss the writ of error is denied.

If, however (as in all probability is the case) the writ is idle without the bill of exceptions, the plaintiff-in-error may take dismissal, if so advised, without costs.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1920.

No. Original

Ex parte

EXPORTERS OF MANUFACTURERS' PRODUCTS, INC.,

Petitioner.

On petition for writ of mandamus and/or writ of prohibition to the Circuit Court of Appeals for the Second Circuit.

CITY, COUNTY & STATE OF NEW YORK, ss.:

HARFORD T. MARSHALL, being duly sworn, deposes and says:

I am a member of the bar of the State of New York of upwards of twenty years' standing and a member of the bar of the District Court for the Southern District of New York and of the Circuit Court of Appeals for the Second Circuit, and attorney of record for the petitioner in the case in said courts referred to in the petition.

I have read the petition and have personal knowledge of the facts therein stated. I have been attorney of record for the petitioner since the action at law referred to was begun and participated in the trial and had charge of the preparation of the bill of exceptions and all other proceedings in relation to the writ of error herein.

I attended in person before District Judge William B. Sheppard at Pensacola, Florida, on May 11th, 1920, upon the settlement of the bill of exceptions and prepared and argued the motions in the District Court and in the Circuit Court of Appeals referred to in the petition.

All the statements in the petition are true of my own knowledge. Supplementing the facts stated in the petition, I further state the following as true of my own knowledge:

During the month of January, 1920, and prior to February 24th, 1920, which is the date of the expiration of the period of 90 days from the date of the entry of judgment, November 26th, 1920, under Rule 5 of the District Court for the Southern District of New York, and during that period of said extension I had several conversations by telephone with Mr. Wallace, a member of the firm of Chadbourne, Babbit & Wallace, attorneys for the defendant Butterworth-Judson Company herein, and with Mr. Callan associated with said firm. I cannot recall the exact words used in these conversations, but do recall the substance clearly and distinctly. The substance of these conversations was that an extension of the term for the purpose of settling and filing the bill of exceptions beyond the 90 days would be needed by the petitioner herein on account of the size and condition of the record of the trial and on account of the absence of Judge Sheppard from this district in Pensacola in the State of Florida. I wrote to Mr. Wallace on January 6th, 1920, as follows:

"January 6, 1920.

William Wallace, Jr., Esq.,
14 Wall Street,
New York City.

My dear Mr. Wallace:

I am preparing the Assignments of Error in the case of Exporters against the Butterworth Judson Company.

The record is somewhat confused and I would like very much to go over the record with you very briefly and see if we cannot straighten it out; of course, in your office at your convenience.

Yours very truly,

HARFORD T. MARSHALL."

About this time, and within a few days subsequent to January 6th, 1920, Mr. Wallace and Mr. Callan agreed orally to give me such reasonable extension of time as might be needed for the purpose above stated. Between January 6th and January 16th I conferred with them on several occasions at their office, No. 60 Wall Street, New York City, in regard to certain exceptions appearing in the stenographer's minutes of the trial and during these interviews they again orally agreed to give me such reasonable further time as might be necessary for the purpose of settling the bill of exceptions, and the question of further time was not further discussed. They wrote to me on January 16th as follows:

"January 16, 1920.

Exporters of Manufacturers' Products, Inc.

vs.

Butterworth-Judson Company.

Harford T. Marshall, Esq.,
2 Rector Street,
New York, N. Y.

Dear Sir:

In respect to your proposal to supplement the record in the above entitled action, by adding exceptions to certain parts of the Court's charge or refusal to charge, we wish to say that we have given the same our very careful consideration. The stenographer's transcript of proceedings at the trial correctly discloses on pages 850-1-2 all that transpired with respect to written requests for charges submitted by each party. In fact, those requests were never specially read to the jury.

The transcript (page 852) also discloses the following arrangement with respect to the noting of exceptions thereto:

> 'Mr. Marshall: Then it may be understood that each side may have 24 hours or something like that in which to note exceptions?
>
> The Court: Yes.
>
> Mr. Wallace: That would be agreeable to us.'

We think the actual proceedings as disclosed in the transcript should be incorporated in any record to be made, but in view of the foregoing stipulation, which we entered into upon the trial, at your suggestion, we must object to any exceptions because none were noted within the time specified in the said stipulation, and we shall be compelled to reserve such an objection in connection with any step taken by us by way of participating in the preparation of a record in this case.

Very truly yours,

CHADBOURNE, BABBIT & WALLACE."

On January 31st, 1920, I wrote to Judge Sheppard at Pensacola as follows:

"January 31, 1920.

Honorable W. B. Sheppard,
Judge, U. S. District Court,
Pensacola, Florida.

Dear Sir:

In preparing our Assignment of Errors for the review of the case of Exporters of Manufacturers' Products, Inc., against Butterworth-Judson Company, tried before you in the District Court in New York last October, we have been unable to agree with the defendant's attorneys with respect to certain exceptions which we claim to instructions to the jury given and refused by you.

After the conclusion of your main charge you called the attention of all the counsel to

the written requests for instructions which had been handed to you, and it was then agreed that instead of reading them one by one you would mark upon the requests themselves whether they were given or refused, and give each side an exception to his opponent's requests charged and to his own requests refused. This clearly appears at page 851 of the record, where the immediate reference was to the defendant's requests. You had just said that you had covered some of the requests, but not quite as fully as requested, because you did not have the time. Mr. Marshall then said 'If your Honor will mark those refused and give Mr. Stanchfield an exception and those which are charged and give me an exception.' Mr. Rand then said 'The same as to both sides.' It is true that Mr. Marshall then said, page 852, that each side was to have twenty-four hours 'or something like that' in which to note exceptions. In point of fact, however, your notations upon the requests to charge were never available to either side until some weeks after the trial. When we finally saw them we found that you had in many cases marked our requests 'given,' but these requests were never, in point of fact, given, because they were not read to the jury except as they may have been incorporated in your general charge.

We insist, therefore, that in our assignments of error, you have allowed us an exception (a) to each request of ours which you refused, (b) to each request of ours which you did not read to the jury even though you have it noted as given. We are confident that it was your in-

tention to allow each side to note an exception as above indicated. In order to refresh your recollection we are enclosing the pertinent pages of the minutes covering this matter. The enclosure is our original copy of the minutes and we ask that you kindly return them with your decision.

Yours Respectfully,

HARFORD T. MARSHALL."

I received a reply from him dated February 4th, 1920, as follows:

"February 4, 1920.

Harford Toland Marshall, Esq.,
2 Rector Street,
New York, N. Y.

Dear Sir:

Replying to your letter of the 31st ult., enclosing copy of Minutes in the trial of Exporters of Manufacturers' Products, Inc., against Butterworth-Judson Company, I would state that my memory is refreshed on the subject, and it accords with the stenographer's report, generally, and likely as not, some of the Requests were marked "Given," but were not in fact read, but some of them may have been read, and if so the Minutes should indicate it. I expected Counsel on both sides to present the requested Instructions the following day, and remained in the Office until 12 o'clock, but no one appeared, except Mr. Rand,

who called to ascertain if the jury had reported a verdict.

When you submit the Bill of Exceptions for settlement, you had better notify opposing counsel your purpose to ask the Court to note the exceptions on these requests.

Yours very truly,

WM. B. SHEPPARD."

The stenographer's minutes were very voluminous, consisting of 860 typewritten pages. There were 57 documentary exhibits, 28 of which were in the custody of the defendant's attorneys and many of which it was necessary to reproduce by photography. The defendant's attorneys were informed by me immediately after the termination of the trial that it was the intention of the plaintiff-in-error to review the judgment by writ of error from the United States Circuit Court of Appeals for the Second Circuit. The question of stipulating an extension of the term for the purpose of filing the bill of exceptions was discussed at the conferences above referred to, understood and agreed to orally, and about this time, that is, about the end of January or beginning of February, 1920, I instructed my managing clerk, Lewis Bassian, whose affidavit is herewith submitted, to prepare a written stipulation and have it signed by the attorneys for the defendant, but stated no time in which he was to do this, as I considered that it was his duty to obtain the extension within the proper time.

On March 1st, 1920, as appears in the affidavit of said Lewis Bassian, herewith submitted, he presented a stipulation extending the time in which to file a bill of exceptions to April 6th, 1920, to the

attorneys for the defendant. It was retained by them and another stipulation prepared by them, signed and delivered to him upon the following day, March 2nd, 1920, upon which, without any objection upon the part of the defendant's attorneys, an order was signed and filed by Judge Mayer.

On March 11th, 1920, I wrote to Mr. Wallace as follows:

"March 11, 1920.

Exporters v. *Butterworth Judson.*

Chadbourne, Babbit & Wallace, Esqs.,
14 Wall Street,
New York City.

My dear Mr. Wallace:

I am about to send the Bill of Exceptions to Judge Sheppard in Pensacola for settlement. Of our exhibits you have Nos.:

6. Letter of May 7th by the Plaintiff to the Butterworth-Judson Company.
10. Contract No. 414.
11. " " 415.
12. " " F. O. 2039.
13. " " F. O. 2074.
16. Gun cotton contract.
17. Hudson Bay contract.
22. Letter of July 16th.

Will you kindly have Mr. Callan get your exhibits together in addition to these and let me have an opportunity to copy or photograph them.

I hope this can be done at once as I have only till April 6th to file the Bill of Exceptions.

Yours very truly,

HARFORD T. MARSHALL."

A few days later the defendant's attorneys sent me copies of the exhibits requested for insertion in the bill of exceptions.

On March 29th, 1920, I wrote Judge Sheppard as follows:

"March 29, 1920.

Exporters of Manufacturers' Products, Inc.,

against

Butterworth-Judson Company.

Honorable W. B. Sheppard,
U. S. District Judge,
Northern District of Florida,
Pensacola, Florida.

Dear Sir:

I am sending today by parcels post the Bill of Exceptions in the above entitled matter for settlement, and I also enclose copy of letter sent to the opposing counsel, together with copy of my letter to you of January 31, 1920 and your reply of February 4, 1920.

The stenographer's minutes I believe to be correct as to just what occurred upon the trial. The plaintiff's requests to charge, however, were incorporated in the minutes after the ver-

dict and none of them, in fact, were read to the jury in the language requested or in any form at all, except in so far as your Honor may have incorporated the substance of them in your main charge.

Under the circumstances, we feel that you should give us an exception to each and every charge requested, as, under any circumstances, they were not read to the jury in the language requested. The opposing counsel will doubtless communicate with you upon this point.

Yours very respectfully,

HARFORD T. MARSHALL."

and on the same day sent to him at Pensacola the bill of exceptions and wrote to the attorneys for the defendant, enclosing a copy of my letter to Judge Sheppard, as follows:

"March 29, 1920.

Exporters of Manufacturers' Products, Inc.,

against

Butterworth-Judson Company.

Chadbourne, Babbit & Wallace, Esqs.,
14 Wall Street,
New York City.

Dear Sirs:

I enclose herewith copy of letter to Judge Sheppard in the above entitled matter. I also enclose copy of my letter to him of January 31, 1920 and his reply of February 4, 1920 in

order that you may communicate with him upon the settlement of the Bill of Exceptions.

Yours very truly,

HARFORD T. MARSHALL."

On April 3rd, 1920, I received from the attorneys of the defendant a letter enclosing copies of two letters sent to Judge Sheppard. They read respectively:

"April 3, 1920.

Harford T. Marshall, Esq.,
2 Rector Street,
New York, N. Y.

Dear Sir:

We beg to hand you herewith copy of our letters of April 1st and 2nd to Judge Sheppard in connection with the bill of exceptions in the case of Exporters of Manufacturers' Products, Inc., v. Butterworth-Judson Company.

Very truly yours,

CRAWFORD, BURKE & WALLACE"

"April 1, 1920.

"UNITED STATES DISTRICT COURT,
SOUTHERN DISTRICT OF NEW YORK.

Exporters of Manufacturers' Products, Inc.,

against

Butterworth-Judson Company.

Hon. W. B. Sheppard,
United States District Judge,
Northern District of Florida,
Pensacola, Florida.

Dear Sir:

Referring to the letter to you, dated March 29th, of Harford T. Marshall, Esq., attorney for the plaintiff, respecting the settlement of the bill of exceptions in the above entitled case.

The stenographer's transcript of the proceedings of the trial shows on pages 850 to 852, what transpired with respect to the written requests for charges submitted by each party and to the noting of exceptions to the action of the court in connection therewith.

The transcript discloses the following arrangement with respect to the noting of exceptions to the court's action in connection with the written requests:

"Mr. Marshall. Then it may be understood that each side may have 24 hours or something like that in which to note exceptions?

"The Court. Yes.

"Mr. Wallace. That would be agreeable to us."

This stipulation, it will be noted, was made at plaintiff's request. The proceedings, as shown by the transcript, should of course be incorporated in the bill of exceptions, but we cannot for the defendant consent at this time to the notation of exceptions which were not properly taken.

The plaintiff failed to avail itself of the opportunity afforded by the stipulation, made at its suggestion, to note exceptions within the time stipulated, and we object to the incorporation in the bill of exceptions or record of any exceptions to rulings of this court not taken during the progress of the trial or within the time stipulated.

If your Honor decides to give to the plaintiff at this time the exceptions which it requests in its letter of March 29, 1920, and allows the same to be incorporated in the bill of exceptions, we, on behalf of the defendant, desire that our objection to the allowance of such exceptions be noted in the bill of exceptions or record in the following language:

> 'The defendant, Butterworth-Judson Company, objects upon the settlement of the bill of exceptions to the incorporation therein of any notation showing that plaintiff took any exceptions to the failure of the court to read or make to the jury the requests to charge submitted by the plaintiff; the plaintiff having failed to make known its exceptions during the progress of the trial or within the time stipulated by the parties. The defendant further objects to the incorporation at this time in the bill of exceptions of

any such notation, or of any other notation of exceptions which were not taken at the trial, or other matter which does not correctly show the proceedings thereat. The defendant has urged and preserved this objection in every state of the settlement of this bill of exceptions.'

Yours very respectfully,

CHADBOURNE, BABBIT & WALLACE."

"April 2, 1920.

Honorable William B. Sheppard,
United States District Judge,
Northern District of Florida,
Pensacola, Florida.

Dear Sir:

We confirm telegram sent to you today as follows:

'Respecting the case of Exporters of Manufacturers' Products against Butterworth Judson Company (stop) We object to signing of any bill of exceptions for the following reasons (stop) Terms of court at which judgment was entered has expired (stop) During term no order of court was made or consent of parties given permitting the signing of bill after expiration of Term stop We also repeat and reserve objections set forth in our letter of first instant now as always reserving general objeections to settlemeat of any bill (stop) Plaintiff has failed to furnish us with copy of proposed bill of exceptions submitted to you and has

also failed to serve us with formal notice of such settlement (stop) Therefore we have had no opportunity to examine the proposed bill or to submit or propose objections thereto (stop) Letter follows.'

We desire to note our objections to the signing of any bill of exceptions since the Term of court at which the judgment was entered has expired. Under Rule V of the General Rules of the District Court for the Southern District of New York each term is extended for 90 days from the date of entry of final judgment for the purpose of taking any action which must be taken within the term of the court at which the judgment was entered. The judgment was entered in this case November 26, 1919, and the 90 days expired February 24, 1920. The cases hold that bills of exceptions cannot be signed after the expiration of the term at which the judgment was rendered unless there is an express order of court made during the term or the parties during the term given their consent to the signing of the bill after the expiration of the term. See *Waldron* v. *Waldron*, 156 U. S. 360, at page 378; also *Jones* v. *Grover & Baker Sewing Machine Co.*, 97 U. S. 24 L. E. p. 925. On March 1, 1920, after the expiration of the term as extended by the rule, we did sign a stipulation extending the term to April 6, 1920, for the purpose of settling and filing the bill. The stipulation reads as follows:

'IT IS HEREBY STIPULATED AND AGREED by and between the parties hereto that the No-

vember Term of the United States District Court for the Southern District of New York be extended to April 6th, 1920 for the purpose of settling and filing the Bill of Exceptions herein. The defendant, however, reserves the right to object, as not noted in time, to any exceptions not noted by plaintiff within the time specified by stipulation between the parties entered into upon the trial of this action.'

Under the decisions above mentioned, this stipulation is without effect and we desire to reserve all objections to the consideration or signing of a bill of exceptions at this time.

Without prejudice to the foregoing objections: The plaintiff has failed to serve us with a notice in accordance with the practice here of the settlement of the proposed bill of exceptions, nor has the plaintiff served us with a copy of the bill submitted to you for settlement. Hence we have had no opportunity to examine the document presented to you for signing to ascertain whether it is correct, or to present objections thereto. Mr. Marshall tells us that it is a copy of the Stenographer's minutes. But we cannot waive the right to examine the same before its execution by you to ascertain whether it conforms with the minutes.

We further reserve in addition to the objections above set forth, the objections presented in our letter to you of the first instant.

Yours respectfully,

CHADBOURNE, BABBIT & WALLACE."

The letter of April 2nd, 1920, was the first time any intimation was given of their intention to repudiate their stipulation of March 2nd, and to raise the technical question of practice therein set forth. There was only one copy of the stenographer's minutes of the trial in existence, as appears from the letter of April 17th, 1920, from the attorneys for the defendant, which reads as follows:

"April 17, 1920.

Harford T. Marshall, Esq.,
2 Rector Street,
New York City.

Dear Sir:

We beg to hand you herewith stenographer's minutes in the case of Exporters of Manufacturers' Products, Inc. vs. Butterworth-Judson Company, covering proceedings from October 14, 1919 to the end of the trial inclusive. We find that we have not in our possession the minutes of the proceedings prior to October 14. What we have is merely an excised copy of the minutes covering the first part of the trial made by stenographers in our own office. The copy omits arguments of counsel and other material which were not considered important for our purposes when the copy was made. It is in this first part that the pencilled references and cross-references appear, to which we referred this morning.

We will, of course, expect you to return to us the minutes which we are sending to you herewith after they have served your purpose.

Yours very truly,

CHADBOURNE, BABBIT & WALLACE."

No word was received from Judge Sheppard in answer to the letter of March 29th under April 10th, when I received the following telegram:

"Harford Toland Marshall

Atty at law 2 Rector St New York NY

Bill of exceptions received and filed April 6th but objections filed by Wallace to noting exceptions to the refusal to give requested instructions because not presented within twenty four hours from date of stipulation period objections also made to my signing bill because same was not submitted to adverse counsel with notice of application to judge period rules require notice and copy of exceptions period further objection is made that bill of exceptions was not presented during the term of court period think stipulation until April sixth would waive this omission but notice should have been given and exceptions to requested charges is probably too late period have you any stipulation waiving notice and copy of bill period answer Miami Florida

JUDGE SHEPPARD."

Not hearing from Judge Sheppard by April 6th, the term was further extended by motion and order to May 3rd, 1920, and on April 29th, 1920, the term was further extended to the 25th day of May by motion and order. In the meantime, it was necessary to wire to Judge Sheppard to return the bill of exceptions as appears from telegram sent by me to Judge Sheppard on April 14th, 1920, and which reads as follows:

"W. B. Sheppard,
U. S. District Judge,
Pensacola, Florida.

Term extended by order to May third suggest you send bill of exceptions back to me will have help of opposing counsel to submit same to you in better form in time to file by May third answer collect.

HARFORD T. MARSHALL
Rector Street."

No answer being received to that, your deponent wired Judge Sheppard at Miami, Florida, on April 17th, as follows:

"W. B. Sheppard,
U. S. District Judge,
Miami, Florida.

Wired you Pensacola April fourteenth term extended by order to May third suggest you send bill of exceptions back to me will have help of opposing counsel to submit same to you in better form in time to file by May third answer collect

HARFORD T. MARSHALL
Rector Street."

All these proceedings were discussed with and understood by the attorneys for the defendant. On April 19th, 1920, I received a telegram sent by

Judge Sheppard from Tallahassee, which reads as follows:

"Harford T. Marshall
Atty at law 2 Rector St New York NY

Bill of exceptions forwarded to you today by express per request

JUDGE SHEPPARD,"

and another telegram the same day sent by him from Miami, which reads as follows:

"H T Marshall
2 Rector St New York NY

Telegrams received bill exceptions forwarded by express Monday returning to Pensacola first

JUDGE SHEPPARD."

To make certain that Judge Sheppard would be in Pensacola on May 11th, I wired to him on May 6th as follows:

"W. B. Sheppard
U. S. District Judge
Pensacola Florida

Settlement bill of exceptions exporters Butterworth Judson came before you May eleventh at Pensacola kindly answer collect immediately if you will be there

HARFORD T. MARSHALL,"

and received a reply the same day as follows:

"Harford T. Marshall
Atty at law 2 Rector NY

Will be in Pensacola May eleventh and until June

WM B. SHEPPARD Judge."

On May 11th I met Mr. Callan of the defendant's attorneys at Pensacola, who appeared before Judge Sheppard on the settlement of the bill.

On March 7th, 1921, defendant made a motion in the United States Circuit Court of Appeals for the Second Circuit to strike the bill of exceptions from the record and to dismiss and quash the writ of error. This motion was granted and an opinion therein was written by Chief Justice Hough, but upon which no order has been entered. The cause is now upon the docket of the United States Circuit Court of Appeals, but has been adjourned pending this petition.

The writ of error was filed within six months after the entry of judgment, namely on May 24th, 1921. The bill of exceptions was filed May 14, 1921.

I considered, during this entire period, that the matter of the signing and filing of the bill of exceptions was an intermediate matter of practice, which under the extraordinary circumstances presented in this case could be arranged between counsel, as it was arranged, and that I was justified in relying on their stipulation.

I had in mind the rule as laid down in the Blisse case, 263 Fed., 961, and the cases therein cited; and also considered that the time for settling a bill of exceptions was regulated by the rules of the

United States District Court and not by any legislative enactment or rule of any higher court and that if the writ of error was filed in due course until that time the court and attorneys had power by stipulation and order to extend and control the time for settling the bill of exceptions.

HARFORD T. MARSHALL.

Sworn to before me this
30th day of April, 1921.

JOSEPH B. DUBREUIL,
Notary Public,
Westchester County.
Certificate filed in New York County.
New York Co. Clerk's No. 263.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1920.

No. Original

Ex parte

EXPORTERS OF MANUFACTURERS' PRODUCTS, INC.,

Petitioner.

On petition for writ of mandamus and/or writ of prohibition to the Circuit Court of Appeals for the Second Circuit.

CITY, COUNTY & STATE OF NEW YORK, ss.:

LEWIS BASSIAN, being duly sworn, deposes and says:

I reside at 2211 Second Avenue, New York City.

At all the times hereinafter mentioned I was and now am managing clerk in the office of Harford T. Marshall, the attorney for the plaintiff herein.

Prior to February 24th, 1920, I was informed by said Harford T. Marshall that the attorneys for the defendant would give any necessary extensions of time to perfect the appeal.

Through inadvertence the stipulation extending the term for settling and filing the bill of exceptions herein was not reduced to writing until March 1st, 1920. On that date I wrote out a stipulation as follows:

> "IT IS HEREBY STIPULATED AND AGREED by and between the parties hereto that the November

Term of the United States District Court for the Southern District of New York be extended to April 6th, 1920, for the purpose of settling and filing the Bill of Exceptions herein,"

which I presented at the office of Chadbourne, Babbit & Wallace, the attorneys for the defendant herein, for signature on that day.

I was requested by them to leave said stipulation at their office till the following day, March 2nd, 1920, for consideration, which I did. On the following day I was informed that said stipulation had been redrafted in form satisfactory to the attorneys for the defendant and would be signed. I immediately called at the office of the attorneys for the defendant and there saw and spoke to Mr. Callan and Mr. Buckley, of Chadbourne, Babbit & Wallace, attorneys for the defendant. Mr. Callan had before him a stipulation which had been prepared and written in their office, and which read as follows:

"IT IS HEREBY STIPULATED AND AGREED by and between the parties hereto that the November Term of the United States District Court for the Southern District of New York be extended to April 6th, 1920 for the purpose of settling and filing the Bill of Exceptions herein. The defendant, however, reserves the right to object, as not noted in time, to any exceptions not noted by the plaintiff within the time specified by stipulation between the parties entered into upon the trial of this action.

Dated, New York, March 1, 1920."

Mr. Callan asked me why such written stipulation was necessary and I stated that it was for the purpose of extending the term of the District Court for the Southern District of New York for the purpose of settling and filing the bill of exceptions herein, and thereupon I asked for and procured a Bender's Diary in said office containing the rules of the District Court for the Southern District of New York and called the attention of Mr. Callan and Mr. Buckley, of said attorneys for the defendant, to Rule 5 of said court, and stated that the purpose of said stipulation was to further extend the period of 90 days provided in Rule 5 of said court.

No question as to the power of the judge to sign an order upon the written stipulation extending the term was mentioned to me, or in my presence or hearing. Whereupon said stipulation was signed with the firm name of the attorneys for the defendant, "Chadbourne, Babbit & Wallace," by Mr. Harold A. Callan, and delivered to me and a duplicate signed by me in the name of Harford T. Marshall was left with them.

Mr. Callan had asked me if an order was necessary on the stipulation and if I intended to enter one. I stated that I did not know if an order was necessary, but would enter one if it was.

I returned to the office of plaintiff's attorney and wrote out the order, copy of which is hereto annexed and marked Exhibit A.

Said order, with the stipulation annexed thereto, was brought to District Judge Mayer on the same day, March 2nd, 1920, and he signed said order, which was thereafter filed on that day in the office

of the Clerk of the United States District Court for the Southern District of New York.

LEWIS BASSIAN.

Sworn to before me this
30th day of April, 1921.

JOSEPH B. DUBREUIL,
Notary Public,
Westchester County.
Certificate filed in New York County.
New York Co. Clerk's No. 263.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1920.

No. Original

Ex parte

EXPORTERS OF MANUFACTURERS' PRODUCTS, INC.,

Petitioner.

On petition for writ of mandamus, and/or writ of prohibition, to the Circuit Court of Appeals for the Second Circuit.

CITY, COUNTY & STATE OF NEW YORK, ss.:

HARRY CAHANE, being duly sworn, deposes and says:

That he is an officer, to wit, treasurer of Exporters of Manufacturers' Products, Inc., the petitioner above named;

That he has read the foregoing petition and knows the contents thereof and that the same is true of his own knowledge, except as to the matters therein stated on information and belief, and as to those matters he believes it to be true;

That the reason why this affidavit is not made by the petitioner is that the petitioner is a corporation.

HARRY CAHANE.

Sworn to before me this
30th day of April, 1921.

JOSEPH B. DUBREUIL,
Notary Public,
Westchester County.
Certificate filed in New York County.
New York Co. Clerk's No. 263.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1920.

No. Original.

Ex parte:

EXPORTERS OF MANUFACTURERS' PRODUCTS, INC.

On petition for writ of mandamus and for writ of prohibition to the Circuit Court of Appeals for the Second Circuit.

BRIEF IN SUPPORT OF MOTION FOR LEAVE TO FILE THE PETITION.

The petition and supporting affidavits show that the petitioner, a New York corporation, in 1918 brought an action at law on contract in the District Court of the United States for the Southern District of New York against Butterworth Judson Company, a New Jersey corporation, to recover a large sum claimed to be due as commissions upon certain sales of acid to the French Government.

The action was tried before a jury in October, 1919, District Judge Sheppard, from the Northern District of Florida, presiding by assignment. The issues of fact were submitted to the jury and a

general verdict rendered for the defendant. Judgment was entered on November 26, 1919, dismissing the complaint on the merits, and the defendant's attorneys were informed that the plaintiff intended to review the assigned errors of the Trial Court by writ of error from the Circuit Court of Appeals for the Second Circuit. Plaintiff's attorney thereupon ordered the stenographer's minutes in order to prepare his bill of exceptions. There were some 860 pages of minutes and numerous exhibits. Judge Sheppard had gone back to Florida, where he remained.

Rule 5 of the District Court provides:

> "For the purpose of taking any action which must be taken during the term of court at which final judgment or decree is entered, such term of court is extended for ninety days from the date of entry of the final judgment or order."

This period of ninety days from November 26, 1919, expired February 24, 1920. In the meantime during January and February Mr. Marshall by telephone and at conferences had at the office of the defendant's attorneys, Messrs. Chadbourne, Babbit & Wallace, of New York City, informed them that he would need an extension of time for the settlement of the bill of exceptions, because Judge Sheppard was in Florida and because he was so busy with other matters that he had not time to complete the bill, which extension the defendant's attorneys, orally, at these conferences, all had prior to February 24th, agreed to give.

Mr. Marshall instructed his clerk, Mr. Bassian, early in February to obtain a written stipulation

accordingly. The clerk overlooked it until March 1st, when he prepared a stipulation extending the time until April 6th, and on the same day, March 1st, presented to the defendant's attorneys for signature. They retained it overnight and informed him the next day that they would sign it. He called on them that day, March 2nd, they showed him the stipulation which they had written with a reservation of certain questions as to exceptions taken at the trial, but with no other reservation. The stipulation so amended was signed by the attorneys for the parties and an order entered thereon in the District Court on the same day. The stipulation reads as follows:

> "IT IS HEREBY STIPULATED AND AGREED by and between the parties hereto that the November Term of the United States District Court for the Southern District of New York be extended to April 6th, 1920, for the purpose of settling and filing the Bill of Exceptions herein. The defendant, however, reserves the right to object, as not noted in time, to any exceptions not noted by the plaintiff within the time specified by stipulation between the parties entered into upon the trial of this action.
>
> Dated, New York, March 1, 1920.
>
> HARFORD T. MARSHALL,
> Attorney for Plaintiff.
> CHADBOURNE, BABBIT & WALLACE,
> Attorneys for Defendant."

Mr. Marshall then had correspondence during the month of March with defendant's attorneys and with Judge Sheppard relative to the settlement of the bill, and no question as to the validity of the

stipulation was raised until April 2nd, when defendant's attorneys brought the matter to Judge Sheppard's attention by telegram and letter.

By subsequent orders of April 6th and April 30th, defendant's attorneys [illegible] the term was further extended, for the purpose of settling the bill. The bill of exceptions was settled by Judge Sheppard at Pensacola, Florida, on May 11th, and on May 24th, within six months from the date of the judgment, the writ of error was allowed and the cause transferred to the Circuit Court of Appeals in accordance with the usual practice. The transcript of record and bill of exceptions were printed and the cause regularly placed on the docket.

Plaintiff in reliance upon the stipulation and the settled practice and rulings of the Appellate Court, that a stipulation made after the expiration of the term, or its extension, was valid and enforceable, expended over $2,000 in stenographer's fees, printing the record, trip to Florida and other usual expenses.

In March, 1921, defendant's attorneys wholly disregarding their stipulation made a motion in the Circuit Court of Appeals to strike out the bill of exceptions. The motion was granted, the case of *Blisse* v. *United States*, decided by the same Court in January, 1921, overruled on this point and the settled practice in the Circuit Court of Appeals for the Second Circuit followed for many years upset.

In its opinion (Exhibit C, to Petition, p. 18) the Court of Appeals held that the order of Judge Mayer entered on the stipulation, extending the term to April 6th, was *coram non judice*, and an absolute nullity, and that the stipulation because

made after February 24th could not give the Court below jurisdiction to grant the order.

Without the bill of exceptions no reversible error is or can be presented. The plaintiff has no remedy save by writ from this Court.

The following questions are involved: (1) Whether attorneys shall be required to live up to their stipulations. (2) Whether the stipulation made orally during the 90-day extension of term and evidenced by the written stipulation dated March 1st was not sufficient to justify the District Court in extending the time accordingly. (3) Whether defendant's attorneys are not estopped by their written stipulation and acquiescence therein for some thirty days in questioning the order. (4) Whether the fact that plaintiff in reliance upon the stipulation and order spent some $2,000 does not operate further to estop the defendant. (5) Whether a District Court of the United States has jurisdiction to enter an order upon a written stipulation dated and presented after the term as extended by its rule, further extending the term for the purpose of settling the bill of exceptions. (6) Whether the order of the District Court so entered upon the stipulation was subject to review in the Circuit Court of Appeals by motion to strike the bill of exceptions from the record.

It is understood that upon a motion for leave to file a petition it is not the proper practice to burden the Court with a long brief. It is, nevertheless, advisable to refer concisely to the points of law involved and the authorities.

It has been shown, and is apparent from the petition, that petitioner, if an order is entered in the Court of Appeals, will be deprived of its day in

court and denied his right of review of the errors assigned and presented by his bill of exceptions.

No other remedy than a writ from this Court is either adequate or available.

Petitioner is following a well-established practice in applying for a writ to compel the Court below to hear the cause upon the bill of exceptions.

The writ has been granted to compel a Circuit Court of Appeals to hear a cause on writ of error which has been improperly dismissed. *Matter of Christensen Engineering Company*, 194 U. S., 458; *In re Merchant's Stock & Grain Company*, 223 U. S., 639.

To compel a District Judge to settle and sign a bill of exceptions. *The Chateaugay Ore & Iron Company, Petitioner*, 128 U. S., 544.

To compel a District Judge to restore a case to the jury docket which he had erroneously transferred to the equity docket. *Ex parte Simons*, 247 U. S., 231.

To compel a Judge to sign a judgment. *Ex parte Bradstreet*, 6 Pet., 774.

Even if the action of the Court below could be reviewed by writ of error, appeal or certiorari, the summary and expeditious practice of a petition for writ of mandamus or prohibition has been approved. *Ex parte Peterson*, 253 U. S., 300, 305, citing *Ex parte Simons, supra.*

The possible alternative to the writ is a review of the whole case by this Court on certiorari after final judgment or the chance that the Circuit Court of Appeals may before judgment certify the question of practice. In the former event, the entire record would have to be brought here, yet the only reviewable question would be that presented now by the petition. As the Circuit Court of Appeals

could not have heard the cause upon the bill of exceptions, it could not be so heard (as is assumed) in the first instance by this Court. There would be, of course, no ground for applying for a writ of certiorari to review the final judgment of the Circuit Court of Appeals, save the very point here presented, namely, the jurisdiction of the District Court to settle and sign a bill of exceptions upon a stipulation which, while made orally during the term (as extended by court rule), was evidenced by a writing dated a few days after this extension had expired. The possible remedy by certification of questions is a mere possibility of obtaining relief and might well require the sending up of the whole voluminous record. Such a mere possibility of obtaining relief is wholly inadequate. It is not to be assumed that the Circuit Court of Appeals is to be compelled by writ to exercise their discretion with respect to certifying questions.

The decision of the Circuit Court of Appeals (Exhibit C annexed to Petition) is wholly at variance with the established practice, with the decisions of this Court and with its own decisions.

In *Blisse* v. *United States,* 263 Fed., at 966, the rule of practice was stated by the same Court to be that:

> "Consent may be given after the term has expired."

It further appears (Opinion of Circuit Court of Appeals, Exhibit C, p. 18) that:

> "An examination of the files" (of the Circuit Court of Appeals, Second Circuit) "will show cases evidencing *only consents made*

> *after expiration of term* and all duly made extensions thereof."

District Judge Mayer in his opinion pointed out that the practice was well settled both in this Court and in the Circuit Court of Appeals (Exhibit B annexed to Petition, p. 14).

The Circuit Court of Appeals stated that it was "constrained" by the decision of this Court in *O'Connell* v. *United States*, 253 U. S., 142, to hold the stipulation and order entered thereon were *"coram non judice."* In that case, however, the rule of the District Court for the Northern District of California provided that the Court could not extend the term beyond thirty days without the consent of the parties. The United States attorney refused consent in open court and asked the Court to refuse to settle the bill when presented (p. 146). This Court held that *under* these circumstances the power of the Trial Court to settle the bill expired on a date prior to that of the settlement. This Court quotes from (p. 147) *Michigan Insurance Bank* v. *Eldred*, 143 U. S., 293, 298, in which this Court said that the bill of exceptions must be presented to the Judge at the term at which the case is tried

> "or within a further time allowed by order entered at that term, or by standing rule of court *or by consent of parties.*"

It is neither stated nor intimated that this consent is to be given or evidenced or that it must be made by a writing signed within the term or the period of extension fixed by rule of Court. In the case at bar, if the date of the consent is material,

the affidavits show that defendant's attorneys orally agreed to the extension of the term before the 90-day period had elapsed, and that only six days thereafter they entered into a stipulation by which their consent was evidenced. There is nothing in the decision in the *O'Connell* case implying that consent so given is an absolute nullity, and that no order can be entered thereon.

For these reasons it is respectfully asked that leave be granted to file the petition.

May 2, 1921.

HENRY M. WARD,
Counsel for Petitioner.

EX PARTE IN THE MATTER OF HUSSEIN LUTFI BEY, MASTER OF THE GUL DJEMAL, PETITIONER.

MOTION FOR LEAVE TO FILE PETITION FOR A WRIT OF PROHIBITION AND A WRIT OF MANDAMUS.

No. —, Original. Motion submitted February 28, 1921.—Decided June 6, 1921.

1. The questions whether a ship of a foreign government, which it uses and operates as a merchant vessel, is, within the waters of the United States, immune from process in admiralty suits to enforce claims for wharfage and supplies, and whether such immunity properly can be claimed for a ship of a government which has severed and not resumed diplomatic relations with the United States, are debatable questions. P. 618.
2. The granting or refusal of the writs of prohibition and mandamus to restrain and correct alleged excesses of jurisdiction by the District Court in admiralty, is discretionary when the jurisdiction of that court is debatable. P. 619.

Leave denied.

THE facts are stated in the opinion, *post*, 618.

Mr. John M. Woolsey, *Mr. Frank J. McConnell* and *Mr. William A. Purrington*, for petitioner:

There is not any other available remedy than that now sought from this court.

The order sustaining the exceptions to the plea in abatement and overruling the plea is not a final order and, hence, is not appealable to the Circuit Court of Appeals. *Montgomery* v. *Anderson*, 21 How. 386; *Cushing* v. *Laird*, 107 U. S. 69; *McLish* v. *Roff*, 141 U. S. 661; *Bender* v. *Pennsylvania Co.*, 148 U. S. 502; *Hohorst* v. *Hamburg-American Packet Co.*, 148 U. S. 262.

If it had been a final order it would not have been directly appealable to this court under § 238, Jud. Code,

because it does not involve the question of the jurisdiction of the court as a federal court, because the court has jurisdiction of the subject-matter of the suit.

The only question is the jurisdiction of any court over the steamship *Gul Djemal* in her present status, and that is a question of liability and not jurisdiction. *The Attualita*, 238 Fed. Rep. 909.

It is only questions of the jurisdiction of the court as a federal court that are directly appealable under § 238. *Louisville Trust Co.* v. *Knott*, 191 U. S. 225, 230; *United States* v. *Congress Construction Co.*, 222 U. S. 199; *Male* v. *Atchison, Topeka & Santa Fe Ry. Co.*, 240 U. S. 97.

It is not possible to obtain a writ of prohibition from the Circuit Court of Appeals. *Muir* v. *Chatfield*, 255 Fed. Rep. 24.

It is not possible to try a case of this kind and at the same time maintain the immunity which it is necessary to maintain in order to preserve the rights of the sovereign. A case cannot be tried without submitting to the jurisdiction of the court. The filing of a bond would at once waive immunity. *The Luigi*, 230 Fed. Rep. 493. It is only a sovereign or his representative that can claim sovereign immunity. *The Crimdon*, 35 T. L. R. 81, 82.

The relief herein prayed for is, therefore, appropriate and is apparently the only relief procurable.

There is ample precedent for the granting of a writ of prohibition in a case of this kind. *Smith* v. *Whitney*, 116 U. S. 167, 173; *In re Rice*, 155 U. S. 396, 402; *In re New York & Porto Rico S. S. Co.*, 155 U. S. 523, 531.

The first reported instance of a writ of prohibition in this court is, we believe, the case of *United States* v. *Peters*, 3 Dall. 121 (1795), in which the question raised was a question of immunity of an arrested corvette, *The Cassius*, belonging to the French Republic and in which the writ of prohibition was granted. To the same effect in principle are: *In re Baiz*, 135 U. S. 403; *In re Cooper*,

138 U. S. 404; *In re Cooper*, 143 U. S. 472; *Ex parte Indiana Transportation Co.*, 244 U. S. 456; *Ex parte Easton*, 95 U. S. 68, 77.

MR. JUSTICE VAN DEVANTER delivered the opinion of the court.

This is a motion for leave to file a petition for a writ of prohibition and a writ of mandamus. The circumstances leading up to the motion can be shortly stated. The Steamship *Gul Djemal*, now in the Port of New York, was arrested and is being held under process issued against her in several suits in admiralty in the District Court for that district. She is a merchant ship and came from Constantinople to New York under a time charterparty, for a purely commercial purpose, shortly before the suits were brought. The claims sought to be enforced in them amount to $80,585 and are for wharfage, fuel, supplies and other necessaries furnished to the ship at Gibraltar in the course of her voyage and at New York after her arrival. Her master, Hussein Lutfi Bey, appearing specially in the suits, applied to have her released from arrest, and in support of his application alleged that she was owned, manned and operated by the Turkish or Ottoman Government, that she therefore was not subject to the court's process and that he, as the representative and agent of that government, was her true and lawful bailee and as such entitled to her immediate possession. The court declined to order her release, and in the petition now proffered the master seeks a writ of prohibition forbidding further proceedings in the suits and a writ of mandamus commanding that the order denying his application be vacated and another entered releasing the ship. The questions involved are, first, whether the ship of a foreign government which it uses and operates as a merchant vessel is, when within the waters of the United States, immune from process in suits such as have

been described; and, secondly, whether such immunity properly can be claimed in respect of the ship of a government which has severed and not resumed diplomatic relations with the United States. Both questions are important and also new. Their proper solution is not plain but debatable. This is frankly recognized in the brief supporting the motion. Even in admiralty cases a writ of prohibition goes as a matter of right only where the absence of jurisdiction is plain. Where the jurisdiction is debatable the granting or refusal of the writ is discretionary. *Ex parte Muir*, 254 U. S. 522. It is not plain that there is an absence of jurisdiction here, for the question is an open one and of uncertain solution. On application to the State Department, it declined to ask the Attorney General to present to the District Court a suggestion avowing that the ship belonged to the Turkish or Ottoman Government and was immune from seizure. We regard the situation as one in which to refuse the writ would be a proper exercise of discretion. There are stronger reasons against granting a writ of mandamus.

Leave to file petition denied.